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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 102 **203**

THE INTERSTATE COMMERCE COMMISSION, APPEL-
LANT,

v.

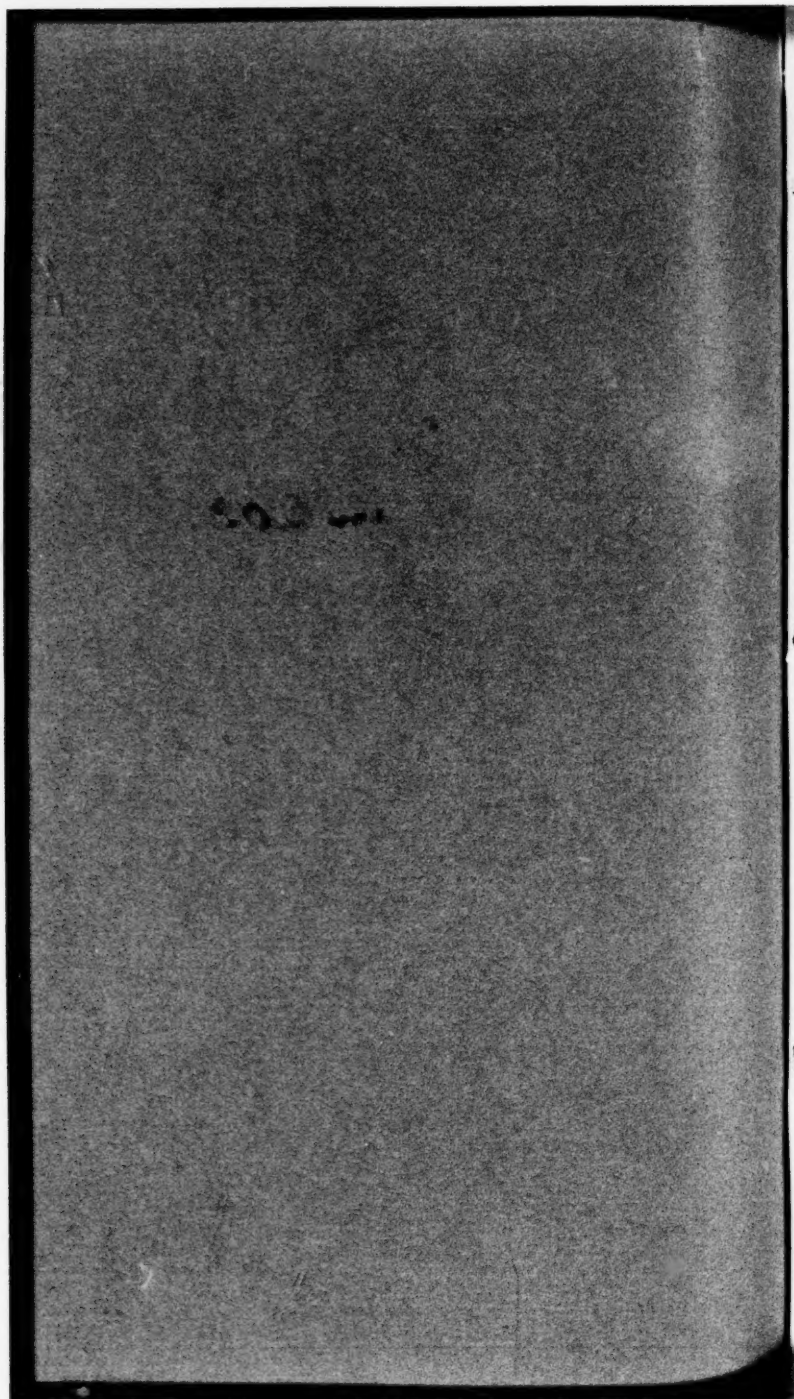
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

FILED JULY 26, 1898.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 563.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

v.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

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United States of America, fifth judicial district.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held pursuant to law on the third Monday of November, A. D. 1895, in the court room of said court in the city of New Orleans, State of Louisiana, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Alex Boorman, United States district judge for the western district of Louisiana.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,	}
<i>v.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.,	
appellees.	}

Be it remembered, that heretofore, to wit, on the 2nd day of September, 1895, a transcript of the record of this cause from the circuit court of the United States for the middle district of Alabama was filed in the office of the clerk of said United States circuit court of appeals for the fifth judicial circuit, in the words and figures following, to wit:



2 In the circuit court of the United States for the middle district of Alabama.

In equity.—No. 158.

THE INTERSTATE COMMERCE COMMISSION

v.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL Railroad and Banking Company of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida and Western Railway Company; The Kansas City, Fort Scott and Memphis Railroad Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company; The Concord and Montreal Railroad Company.

To the Circuit Court of the United States sitting in equity within and for the middle district of Alabama:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of

Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by acts approved March 2, 1889, February 10, 1891, and February 11, 1893, humbly complaining, sheweth to your honors that the Alabama Midland Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Montgomery, in the said State of Alabama; that the Savannah, Florida and Western Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Georgia and Florida, having its principal office at New York, in the State of New York; that the Kansas City, Fort Scott and Memphis Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Kansas, Missouri, and Arkansas, having its principal office at Kansas City, in the said State of Missouri; that the Kansas City, Memphis and Birmingham Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Mississippi, and Alabama, having its principal office at Kansas City, in the State of

4 Missouri; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the said State of Kentucky; that the Mobile and Ohio Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Alabama, Mississippi, Tennessee, and Kentucky, having its principal office at Mobile, in the said State of Alabama; that the East Tennessee, Virginia and Georgia Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Tennessee, having its principal office at Knoxville, in the said State of Tennessee, and the defendants Charles M. McGhee and Henry Fink are receivers thereof; that the Western Railway Company of Alabama is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Atlanta, in the State of Georgia; that the Missouri Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Missouri, Kansas, and Nebraska, having its principal office at St. Louis, in the said State of Missouri; that the Wabash Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Michigan, Ohio, Indiana, Illinois, and Missouri, having its principal office at St. Louis, in the said State of Missouri; that the Sioux City and Pacific Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Iowa, having its principal offices at Chicago, in the State of Illinois, and Omaha, in the State of Nebraska; that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in the said State of Ohio, and the defendant S. M. Felton is the receiver thereof; that the Illinois Central Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Illinois, having its principal office at Chicago, in the said State of Illinois; that the Evansville and Terre Haute Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Indiana,

having its principal office at Evansville, in the said State of Indiana ; that the Jeffersonville, Madison and Indianapolis Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Indiana, having its principal office at Jeffersonville, in the said State of Indiana ; that the Louisville, New Albany and Chicago Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Indiana and Kentucky, having its principal office at Chicago, in the State of Illinois ; that the New York Central and Hudson River Railroad Company is a corporation created, chartered, and existing under and by virtue

5 of the laws of the State of New York, having its principal office at New York, in the said State of New York ; that the Central Vermont Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Vermont, having its principal office at St. Albans, in the said State of Vermont ; that the Canadian Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the Dominion of Canada, having its principal office at Montreal, in the Province of Quebec, in the said Dominion of Canada ; that the Minneapolis, St. Paul and Sault Sainte Marie Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Minnesota, having its principal office at Minneapolis, in the said State of Minnesota ; that the Central Railroad and Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Savannah, in the said State of Georgia, and the defendant H. M. Comer is the receiver thereof ; that the Housatonic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Connecticut, having its principal office at New Haven, in the said State of Connecticut ; that the Central Railroad Company of New Jersey is a corporation created, chartered, and existing under and by virtue of the laws of the State of New Jersey, having its principal office at New York, in the State of New York ; that the Boston and Albany Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of New York and Massachusetts, having its principal office at Boston, in the said State of Massachusetts ; that the Boston and Maine Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Massachusetts, New Hampshire, and Maine, having its principal office at Boston, in the said State of Massachusetts ; that the New York and New England Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Massachusetts, Connecticut, Rhode Island, and New York, having its principal office at Boston, in the said State of Massachusetts ; that the Old Colony Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Massachusetts and Rhode Island, having its principal office at Boston, in the said State of Massachusetts ; that the Fitchburg Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Massachusetts, having its principal office at Boston, in the said State of Massachusetts ; that the Maine Central Railroad Company is a corporation

created, chartered, and existing under and by virtue of the laws of the State of Maine, having its principal office at Portland, in the said State of Maine; that the Connecticut River Railroad Company
6 is a corporation created, chartered, and existing under and by virtue of the laws of the State of Massachusetts, having its principal office at Springfield, in the said State of Massachusetts; that the Pennsylvania Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office at Philadelphia, in the said State of Pennsylvania; that the Philadelphia and Reading Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office at Philadelphia, in the said State of Pennsylvania, and the defendants, Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, are receivers thereof; that the Baltimore and Ohio Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Maryland, having its principal office at Baltimore, in the said State of Maryland; that the Concord and Montreal Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of New Hampshire, having its principal office at Concord, in the said State of New Hampshire; that the Grand Trunk Railway Company of Canada is a foreign corporation created, chartered, and existing under and by virtue of the laws of the Dominion of Canada, having its principal office at Montreal, in the Province of Quebec, in the said Dominion of Canada; that the Providence and Springfield Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Rhode Island, having its principal office at Boston, in the State of Massachusetts; that the Cheshire Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of New Hampshire and Massachusetts, and merged by consolidation with the said Fitchburg Railroad Company, having its principal office at Boston, in the said State of Massachusetts; that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of , having its principal office at New York, in the State of New York; that the Ocean Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Savannah, in the said State of Georgia; that the Providence and Stonington Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of New York, having its principal office at New York, in the said State of New York; that the New York and Texas Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of New York, having its principal office at New York City, in the said State of New York; that the Citizens' Steamboat Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of New York, having its principal office at Troy, in the said State of New York; that the
7 New Haven Steamboat Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Connecticut, having its principal office at New York City, in the State of New York; that the People's Line of Steamers is a corporation created, chartered,

and existing under and by virtue of the laws of the State of New York, having its principal office at New York City, in the said State of New York; that the Maine Steamship Line is a corporation created, chartered, and existing under and by virtue of the laws of the State of Maine, having its principal office at Portland, in the said State of Maine; that the Bridgeport Steamboat Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Connecticut, having its principal office at New York City, in the State of New York; that the Norwich and New York Transportation Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Massachusetts, having its principal office at Boston, in the said State of Massachusetts; that the Hartford and New York Transportation Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Connecticut, having its principal office at Hartford, in the said State of Connecticut, and that the said defendants were, at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property by their several lines of railroad, under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, and particularly were the said defendants then engaged in the said business from Troy, in the State of Alabama, thence through several intermediate States to divers points and places within the United States situated without the State of Alabama, and as such common carriers were during all the time aforesaid and still are subject to the provisions of the said act entitled "An act to regulate commerce," and said amendments thereto.

That the said defendants were heretofore, to wit, on the 29th day of June, 1892, duly impleaded in a controversy, not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of the Board of Trade of Troy, Ala., a mercantile society organized as a corporation and existing under the laws of the State of Alabama, and having its principal office at Troy in that State, for an alleged violation on the part of the said defendants of the provisions of the said act, entitled "An act to regulate commerce," as at large and more fully appears by the said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A.

That thereafter, to wit, on the 15th day of July, 1892, the Louisville, New Albany and Chicago Railway Company filed its answer to the above-named petition of the said Board of Trade of Troy, Ala., as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafter, to wit, on the 16th day of July, 1892, the Illinois Central Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafter, to wit, on the 19th day of July, 1892, the New York and New England Railroad Company, representing its own road and that of the Providence and Springfield Railroad Company, of which it is the lessee, filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafter, to wit, on the 19th day of July, 1892, the Fitchburg Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafter, to wit, on the 21st day of July, 1892, the Connecticut River Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit F.

That thereafter, to wit, on the 21st day of July, 1892, the Kansas City, Memphis and Birmingham Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafter, to wit, on the 21st day of July, 1892, the Kansas City, Fort Scott and Memphis Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafter, to wit, on the 23d day of July, 1892, the Pennsylvania Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit I.

That thereafter, to wit, on the 23d day of July, 1892, the Philadelphia and Reading Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit K.

That thereafter, to wit, on the 23d day of July, 1892, the Metropolitan Steamship Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit L.

That thereafter, to wit, on the 23d day of July, 1892, the Boston and Maine Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit M.

That thereafter, to wit, on the 28th day of July, 1892, the Maine Central Railroad Company filed its answer to the said petition, as at large

and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit N.

That thereafterwards, to wit, on the 28th day of July, 1892, the Western Railway of Alabama filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit O.

That thereafterwards, to wit, on the 28th day of July, 1892, the Canadian Pacific Railway Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit P.

That thereafterwards, to wit, on the 2d day of August, 1892, the Alabama Midland Railway Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit Q.

That thereafterwards, to wit, on the 2d day of August, 1892, the Savannah, Florida and Western Railway Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit R.

That thereafterwards, to wit, on the 6th day of August, 1892, the Central Railroad Company of New Jersey filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit S.

10 That thereafterwards, to wit, on the 10th day of August, 1892, the Louisville and Nashville Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit T.

That thereafterwards, to wit, on the 13th day of August, 1892, the Central Railroad and Banking Company of Georgia, and H. M. Comer, receiver thereof, filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit U.

That thereafterwards, to wit, on the 15th day of August, 1892, the Mobile and Ohio Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit V.

That thereafterwards, to wit, on the 24th day of August, 1892, the Concord and Montreal Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit W.

That thereafterwards, to wit, on the 31st day of August, 1892, the Providence and Stonington Steamship Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit X.

That thereafterwards, to wit, on the 13th day of July, 1892, Mr. F. H. Kingsbury, treasurer, filed a written statement with the said Commission to the effect that the Cheshire Railroad was consolidated with the Fitchburg Railroad Company September 30, 1890, and since that time the Cheshire Railroad has been owned and operated by the Fitchburg Railroad Company, as at large and more fully appears in and by the said letter on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit Y.

That thereafterwards, to wit, on the 21st day of July, 1892, Mr. C. S. Melten, general manager, filed a written statement with the said Commission to the effect that the answer filed by the New York and New England Railroad Company for itself and the Providence and Springfield Railroad Company may also be taken as the answer of the Norwich and New York

Transportation Company, a majority of the stock of which is controlled by the New York and New England Railroad Company and the tariffs applying by the lines of which company are issued by the New York and New England Railroad Company, as at large and more fully appears in and by the said letter on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit Z.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose, at the city of Troy, in the State of Alabama, on the 11th day of November, 1892, when the said complainant, the Board of Trade of Troy, Alabama, as well as all of the said defendants, duly appeared, by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendants had violated the provisions of the said act, entitled "An act to regulate commerce," in certain respects, as was stated to have been violated by them in the said petition herein referred to as a part hereof, and thereupon, on the 15th day of August, 1893, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit AA.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said Commission, with

respect thereto, agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit AB.

That thereafterwards, to wit, on the 28th day of August, 1893, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint as aforesaid, together with the order and notice aforesaid, to be delivered to each and all of the parties to the proceeding, and thereupon the petitioner shows that it has not been made to appear to the said Commission that the said defendants have ceased and desisted from the violations of the law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard, and have wilfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and notice as hereinbefore set forth, hitherto wholly neglected and refused and still do neglect and refuse to comply with the same, to wit, at Troy, in the said State of Alabama, and at Montgomery, in the State of Alabama, in this, that they have since the 10th day of September, 1893, continued to charge, demand, collect, and receive a greater compensation for services rendered for transportation of property than is specified in the said last mentioned order of the said Commission hereinbefore referred to as a part hereof.

Wherefore the petitioner prays:

1. That a subpoena or other suitable process may issue, according to the course of equity, requiring the Alabama Midland Railway Company; the Central Railroad and Banking Company of Georgia, and H. M. Comer, receiver thereof; the Savannah, Florida and Western Railway Company; the Kansas City, Fort Scott and Memphis Railroad Company; the Kansas City, Memphis and Birmingham Railroad Company; the Louisville and Nashville Railroad Company; the Mobile and Ohio Railroad Company; the East Tennessee, Virginia and Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; the Western Railway of Alabama; the Missouri Pacific Railway Company; the Cincinnati, New Orleans and Texas Pacific Railway Company and S. M. Felton, receiver thereof; the Illinois Central Railroad Company; the Evansville and Terre Haute Railroad Company; the Jeffersonville, Madison and Indianapolis Railroad Company; the Louisville, New Albany and Chicago Railway Company; the Clyde Steamship Company; the Ocean Steamship Company of Savannah; the Providence and Stonington Steamship Company; the New York and Texas Steamship Company; the Metropolitan Steamship Company; the Citizens' Steamboat Company; the Hartford and New York Transportation Company; the Grand Trunk Railway Company of Canada; the New Haven Steamboat Company; the People's Line Steamers; the Maine Steamship Company; the New York Central

and Hudson River Railroad Company; the Central Vermont Railroad Company; the Bridgeport Steamboat Company; the Norwich and New York Transportation Company; the Canadian Pacific Railway Company; the Minneapolis, St. Paul and Sault Ste. Marie Railway Company; the Housatonic Railroad Company; the Central Railroad Company of New Jersey; the Boston and Albany Railroad Company; the Boston and Maine Railroad Company; the New York and New

13 England Railroad Company; the Old Colony Railroad Company; the Fitchburg Railroad Company; the Maine Central Railroad Company; the Connecticut River Railroad Company; the Pennsylvania Railroad Company; the Philadelphia and Reading Railroad Company and Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, the receivers thereof; the Baltimore and Ohio Railroad Company; the Providence and Springfield Railroad Company; the Cheshire Railroad Company, and the Concord and Montreal Railroad Company severally to appear at such time and place as this honorable court may determine, then and there each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged, as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants, and attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum of money, not exceeding the sum of five hundred dollars, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the petitioner's cause may require.

[SEAL.]

The INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,

The Secretary thereof, therunto duly authorized.

EXHIBIT A.

No. 347.

Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,

v.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD and Banking Company of Georgia, and H. M. Comer and others, the receivers thereof; The Savannah, Florida and Western Railway Company; The Kansas City, Fort Scott and Gulf Railroad Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Wabash Railroad Company; The Sioux City and Pacific Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company; The Concord and Montreal Railroad Company.

Complaint.

The petition of the above-named complainant respectfully shows:

1. That complainant is an association of citizens and business men of the city of Troy, Pike County, State of Alabama, organized for the purpose, among others, of fostering the commercial, industrial, financial, and other interests of said city.

2. That the defendants above named are common carriers engaged in interstate commerce and as such subject to the act to regulate commerce;

and that they form several lines and as members of such lines, respectively, are engaged under a common control, management, or arrangement for continuous carriage, in the transportation of passengers and property (some of said lines wholly by rail and others partly by rail and partly by water) from and to New York, Baltimore, and other Eastern points and also from and to Western and Northwestern points and New Orleans and the Atlantic seaboard to and from said city of Troy.

3. That the said Alabama Midland Railway Company and Central Railroad Company of Georgia are the only ones of said defendant carriers that directly reach said city of Troy and are the initial roads in all of said lines leading from Troy.

4. That said city of Troy and the city of Montgomery, Ala., are in active competition with each other, and said city of Troy is located at the intersection of said Alabama Midland Railway and Central Railroad of Georgia, and the city of Montgomery, Ala., is at the western terminus of the former road, 52 miles from said city of Troy, and said Alabama Midland and the defendant roads connecting with it from the East charge and collect a higher rate on shipments to Troy, the shorter distance point, than on shipments through Troy to Montgomery, the latter being the longer distance point by 52 miles, for the transportation of a like kind of property, under substantially similar circumstances and conditions, over the same line and in the same direction, the shorter distance to Troy being included in the longer distance to Montgomery, and that said rates from the cities of Baltimore and New York to Troy exceed those to Montgomery from 6 to 21 cents per 100 pounds, according to class of traffic, as shown by the following tables :

16	Class.	From Baltimore.		From New York.	
		Rate to Troy.	Rate to Montgomery.	Rate to Troy.	Rate to Montgomery.
First.....		\$1.28	\$1.07	\$1.36	\$1.14
Second.....		1.09	.92	1.17	.98
Third.....		1.00	.81	1.03	.86
Fourth.....		.86	.68	.89	.73
Fifth.....		.71	.56	.74	.60
Sixth.....		.58	.45	.61	.49
A.....		.45	.34	.48	.36
B.....		.55	.45	.58	.48
C.....		.44	.37	.47	.40
D.....		.42	.36	.45	.39
E.....				.70	.58
F.....		.80	.72	.92	.78

5. That said Central Railroad of Georgia and Alabama Midland Railway and their connections unjustly discriminate against Troy and in favor of Montgomery in the rates charged and collected to said cities on phosphate rock from the South Carolina and Florida fields, the rate to Montgomery, the longer distance point, being \$3 per ton and to Troy \$3.22 per ton; and that all phosphate rock carried from said fields to Montgomery by the Alabama Midland Railway has to be hauled through Troy, and that said greater charge to Troy than to Montgomery over the Alabama Midland Railway is in violation of "the long and short haul" clause of the act to regulate commerce.

6. That the receipts of cotton at Troy for the season of 1892 amounted to from 33,000 to 34,000 bales and the entire business at that point will

approximate \$3,000,000 per annum, and that said roads which reach Troy and their connections unjustly discriminate in freight rates on cotton against Troy and in favor of Montgomery; that the rate on cotton by the Alabama Midland Railway to the Atlantic seaports, Brunswick and Savannah, Ga., and Charleston, S. C., is from Montgomery 40 cents per 100 pounds, and from Troy 47 cents per 100 pounds; that cotton transported from Montgomery over the Alabama Midland Railway to such ports has to pass through Troy, and that in making the greater charge

for the shorter haul from Troy than the longer haul from Montgomery the said defendants are guilty of unjust discrimination against Troy, and also violate the "long and short haul" clause of the act to regulate commerce; and that said roads and their connections unjustly discriminate against Troy in favor of Montgomery and other competitors of Troy, to wit: Rome, Cedartown, Dalton, Columbus, and Carrolton, Ga., and Opelika and Anniston, Ala., in their rates to points on the Atlantic seaboard, to points on the New York Central and Hudson River Railroad (such as Watertown, Albany, Troy, Utica, etc.), and to the city of New York; and that the same unjustly discriminatory rates on cotton are adhered to when shipments are made from Montgomery and Troy over the Central Railroad of Georgia as when made over the Alabama Midland, the distances from Troy over the former road being about 8 miles less than from Montgomery by said road. It is further alleged that Troy is also unjustly discriminated against in rates on cotton transported via Montgomery to New Orleans, Troy being charged the full local rate to Montgomery by both the Georgia Central and the Alabama Midland. In connection with these allegations reference is made to the rate sheets of defendants on file with the Interstate Commerce Commission, and particularly to cotton rate sheet of the Richmond and Danville Railroad, "R. C. Circular No. 5, Series 1890-'91," in effect September 22, 1890.

7. It is also alleged, on information and belief, that the several defendant railroads leading to and from and doing business at Montgomery have and do cut their regular tariff rates on cotton from said city to other points, and have and do pay rebates on cotton shipped to and from said city, and in this way discriminate in favor of said city and against Troy and other points, to the great injury and damage of the latter.

8. Complainant further charges that, on shipments for export of freight from Montgomery and other points subject to what is known as the jurisdiction of the "Southern Railway and Steamship Association," to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point, and Norfolk, a lower rate is charged than the regular published tariff rate to such seaports; for example, if the regular rates by rail to such seaports and the ocean rates thence to Liverpool be as follows on day shipment:

From—	To—	Rate.	Thence to—	Rate.	Total.
		<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Montgomery.....	Brunswick	40	Liverpool.....	53	93
Do.....	Savannah	40	do.....	53	93
Do.....	Charleston	40	do.....	48	88
Do.....	West Point.....	45	do.....	35	80
Do.....	Norfolk.....	45	do.....	35	80

Montgomery is allowed to ship through to Liverpool via any of those seaports at the lowest through rate, via any of them, to wit, 80 cents. If the shipment is by Savannah or Brunswick this would be a reduction of 13 cents and this is taken from the rail rate to such seaport, leaving it 27 cents instead of 40 cents, the regular tariff rate. This privilege is denied to Troy, and is an unjust discrimination against Troy in favor of Montgomery and such other favored cities, and also against shipments which terminate at such seaports in favor of shipments for export.

9. That the rates by the defendant roads forming lines to Troy from northwestern and western points unjustly discriminate against Troy, and in favor of Montgomery, Columbus, and other points; that so great is this discrimination that goods from the west can be reshipped from Columbus through Troy to Brantley, Ala., and sold at a less price than Troy merchants can sell them, and from Montgomery through Troy to Ozark and Dethen, Ala., and sold at a less price than Troy merchants can sell them. As showing these unjust discriminations on shipments from the west, we attach hereto as part of this complaint tables of rates on class goods, Nos. 1, 2, 5, 6 A, 6 B, 6 C, and No. 7. Tables of rates on class goods, Nos. 3 and 4, are also attached as part of this complaint and as showing discriminations against Troy in favor of the points named therein on shipments from Baltimore, Md., and New York.

10. Complainant charges that the defendant roads which reach Troy and their connections have been and are guilty of violating the act to regulate commerce—

(1) In charging and collecting, as above set forth, a greater compensation for the transportation of a like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer distance.

(2) In unjustly discriminating against Troy in favor of her competitors and thereby subjecting the former to an unreasonable disadvantage and giving the latter an unreasonable preference or advantage.

(3) And in that said rates to Troy complained of herein are excessive and unreasonable and unjust in themselves.

11. Complainant alleges that said unjust discriminations and excessive rates have greatly injured the business of Troy, and if not corrected will result in still greater injury to, if not the destruction of, such business; and, therefore, complainant prays that the defendants, after due notice according to law, be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and for such other further and more specific relief as may be deemed proper and necessary in the premises.

W. C. OATES,
Attorney for Complainant.

19 DISTRICT OF COLUMBIA, ss:

E. H. Bashinsky, being duly sworn, says that he is agent for and a member of complainant, and that the matters set forth in the foregoing petition are true as he verily believes.

E. H. BASHINSKEY.

Sworn to and subscribed before me this 27th day of June, 1892.

[SEAL.]

MARTIN S. DECKER,
Notary Public.

TABLE NO. 1.—*Rates on class goods from Louisville, Ky., Columbus and Hickman, Ky., Belmont, Mo., New Albany, Ind., Brooklyn, Ill., Jeffersonville, Ind., Evansville, Henderson, Ky., Cairo, Ill., East Cairo, Ky., and Paducah, to points as compared to Troy, Ala.*

Miles.....	542	596	570 (to Eufaula).	550	490	542
Class.	Milledgeville, Ga.	Albany and Americus, Ga.	Eufaula, Opelika, Ala., and Columbus, Ga.	Union Springs, Ala.	Montgomery, Ala.	Troy, Ala.
First—Dry goods and notions.....	\$1.15	\$1.20	\$1.07	\$1.35½	\$0.98	\$1.40
Second—Snuff and tobacco.....	.99	1.10	.92	1.17½	.92	1.30
Third—Potatoes in barrels.....	.87	.96	.81	1.04	.78	1.15
Fourth—Canned goods, cheese, etc. .	.73	.82	.68	.85	.63	.95
Fifth—Sugar and soda in barrels and in kegs.....	.60	.67	.56	.69½	.52	.78
Sixth—Coffee, fish, shot, sirup.....	.49	.55	.46	.57	.41	.62
A—Bagging and ties.....	.30	.40	.28	.38	.28	.49
B—Lard, dry salt, and smoked meat..	.39	.49	.36	.46	.31	.50
C—Flour in sacks.....	.32	.31	.29	.33	.24	.37
D—Grain, wheat, bran, hay.....	.28	.27	.25	.28	.20	.32
E—Empty barrels.....	.54	.56	.50	.68	.48	.60
F—Flour in barrels.....	.56	.54½	.50	.64	.40	.66

TABLE NO. 2.—*Rates on class goods from St. Louis, Mo., East St. Louis, and Belleville, Ky., to points as compared to Troy, Ala.*

Miles.....	807	825	861	835 (to Eufaula).	755	785
Class.	Troy.	Milledgeville, Ga.	Albany and Americus, Ga.	Opelika, Eufaula, Ala., and Columbus, Ga.	Montgomery, Ala.	Union Springs, Ala.
First.....	\$1.68	\$1.43	\$1.48	\$1.35	\$1.26	\$1.63½
Second.....	1.53	1.22	1.33	1.15	1.15	1.40½
Third.....	1.33	1.07	1.16	1.01	.98	1.22
Fourth.....	1.09	.89	.96	.82	.77	.99
Fifth.....	.90	.72	.79	.68	.64	.81½
Sixth.....	.72	.59	.65	.56	.51	.57
A.....	.56	.37	.47	.35	.35	.45
B.....	.58	.47	.48	.44	.39	.54
C.....	.44	.39	.38	.36	.31	.40
D.....	.37	.33	.32	.30	.25	.33
E.....	.77	.62	.64	.58	.56	.76
F.....	.80	.70	.68½	.64	.54	.78

20 TABLE NO. 3.—*Rates on class goods from Baltimore, Md., to points as compared to Troy, Ala.*

Class.	Troy, Ala.	Albany, Macon, and Mill- edgeville.	Anniston, Birmingham, Eufaula, Montgomery, Ala., and Griffin, Amer- icus, Dalton, Athens, Co- lumbus, Ga.
First	\$1.28	\$1.02	\$1.07
Second	1.09	.90	.92
Third	1.00	.78	.81
Fourth .....	.86	.65	.68
Fifth .....	.71	.55	.56
Sixth .....	.58	.45	.46
A .....	.45	.32	.34
B .....	.55	.44	.45
C .....	.44	.32	.37
D .....	.42	.31	.36
E			
F .....	.86	.62	.72

TABLE NO. 4.—*Rates on class goods from New York to points as compared to Troy, Ala.*

Class.	Troy.	Albany, Milledge- ville, and Macon, Ga.	Anniston, Birmingham, Eufaula, Montgomery, Ala., and Griffin, Americus, Athens, Co- lumbus, Ga.
First	\$1.30	\$1.09	\$1.14
Second	1.17	.96	.98
Third	1.03	.83	.86
Fourth .....	.89	.70	.73
Fifth .....	.74	.59	.60
Sixth .....	.61	.48	.49
A .....	.48	.34	.36
B .....	.58	.47	.48
C .....	.47	.35	.40
D .....	.45	.34	.39
E .....	.70	.52	.58
F .....	.92	.68	.78

TABLE NO. 5.—*Rates on class goods from Louisville, Ky., Evansville, Cairo, Henderson, Paducah, as compared to Troy, to points in close proximity to Troy if reshipped from Troy.*

Class.	From Louis- ville, Ky., to Brantley, Ala.	From Troy to Brantley, Ala.	From Louis- ville, Ky., to Ozark, Ala.	From Troy to Ozark, Ala.	From Louis- ville, Ky., to Dothen, Ala.	From Troy to Dothen, Ala.
First	\$1.61	\$1.81	\$1.56	\$1.76	\$1.62	\$1.88
Second	1.44	1.67½	1.44	1.62	1.47	1.74
Third	1.22	1.49	1.22	1.45	1.25	1.54
Fourth	1.00	1.21	1.03	1.23	1.06	1.30
Fifth .....	.81	.94½	.84	1.01	.88	1.07
Sixth .....	.64	.78	.77	.80	.71	.86
A .....	.51	.62½	.54	.67	.58	.73
B .....	.54	.64	.54	.66	.57	.71
C .....	.46	.51	.49	.49	.40	.51
D .....	.39	.44	.35	.43	.35	.45
E .....	.77	.95	.74	.87	.75	.95
F .....	.84	.95	.72	.90	.72	.94

Distance from Troy to Brantley, Ala., 28 miles; to Ozark, Ala., 40 miles; to Dothen, Ala., 67 miles.

21 TABLE No. 6 A.—*The cost of freight from western points, taking Louisville, Ky., as an example, to reach competitive points of Columbus, Montgomery, and Troy, on the Central Railroad and the Alabama Midland Railway, goods being rehandled in each respective city.*

POINTS ON THE CENTRAL RAILROAD OF GEORGIA.

Class.	From Columbus, Ga., to Inverness, Ala.	From Troy to Inverness, Ala.	From Columbus, Ga., to Linwood, Ala.	From Troy to Linwood, Ala.	From Columbus, Ga., to Brantley, Ala.	From Troy to Brantley, Ala.
First	\$1.62	\$1.77½	\$1.62½	\$1.68½	\$ 1.68	\$1.81
Second	1.39	1.64	1.40	1.55½	1.45	1.67½
Third	1.20	1.44	1.21	1.36	1.28	1.47
Fourth .....	.98	1.19	.98	1.14	1.06	1.21
Fifth .....	.75	.93	.75½	.91½	.86	.94½
A .....	.43	.61	.45	.50	.52	.62½
B .....	.55½	.63½	.55½	.60	.56	.64
C .....	.48	.50½	.48	.48	.42	.51
D .....	.80	.94	.81	.88	.80	.95
E						
F .....	.88	.93	.88	.88	.88	.95
Sixth .....	.65	.76	.65½	.74	.70	.78

Inverness is between Columbus and Troy, 23 miles from Troy and 64 miles from Columbus; Linwood is 12 miles from Troy and 73 miles from Columbus; Brantley is below Troy, and goods shipped from Columbus to that point have to pass through Troy. It is 28 miles from Troy and 113 from Columbus.

TABLE No. 6 B.—*The cost of freight from western points, taking Louisville, Ky., as an example, etc.—Continued.*

POINTS ON THE ALABAMA MIDLAND RAILWAY.

Class.	From Montgomery to Ramer, Ala.	From Troy to Ramer, Ala.	From Montgomery to Shady Grove, Ala.	From Troy to Shady Grove, Ala.	From Montgomery to Brundidge, Ala.	From Troy to Brundidge, Ala.
First	\$1.30	\$1.72	\$1.32	\$1.70	\$1.46	\$1.68
Second	1.20	1.58	1.22	1.50	1.36	1.54
Third	1.06	1.37	1.06	1.37	1.17	1.35
Fourth .....	.87	1.19	.89	1.17	.98	1.15
Fifth .....	.73	.99	.74	.98	.81	.96
A .....	.44	.64	.45	.64	.52	.63
B .....	.45	.64	.46	.63	.52	.62
C .....	.35	.48	.35	.47	.38	.46
D .....	.30	.42	.30	.41	.33	.40
E .....	.64	.75	.65	.84	.72	.83
F .....	.62	.88	.62	.86	.68	.84
Sixth .....	.57	.78	.58	.77	.65	.76

Ramer is 26 miles from Troy and 26 miles from Montgomery; Shady Grove is 15 miles from Troy and 37 miles from Montgomery; Brundidge is below Troy, 17 miles from Troy and 69 miles from Montgomery. All goods shipped from Montgomery to Brundidge have to pass through Troy.

TABLE NO. 6 C.—*The cost of freight from western points, taking Louisville, Ky., as an example, etc.—Continued.*

Class.	From Montgomery to Ozark, Ala.	From Troy to Ozark, Ala.	From Montgomery to Dothan, Ala.	From Troy to Dothan, Ala.
First.....	\$1.56	\$1.76	\$1.62	\$1.88
Second.....	1.36	1.54	1.47	1.74
Third.....	1.22	1.45	1.25	1.54
Fourth.....	1.03	1.23	1.06	1.30
Fifth.....	.84	1.01	.88	1.07
Sixth.....	.67	.80	.71	.86
A.....	.54	.67	.58	.73
B.....	.54	.66	.57	.71
C.....	.40	.49	.40	.51
D.....	.35	.43	.35	.45
E.....	.74	.87	.78	.93
F.....	.72	.90	.72	.94

Both Dothan and Ozark are below Troy and goods shipped from Montgomery to the points have to pass through Troy. Ozark is 40 miles from Troy and 92 from Montgomery. Dothan 67 from Troy and 119 miles from Montgomery.

22 TABLE NO. 7.—*Rates on wagons and buggies from Nashville, Tenn., Louisville, Ky., and Cincinnati, Ohio, to Troy, Ala., as compared to other points.*

Points of destination.	From Louisville, Ky.	From Nashville, Tenn.	From Cincinnati, Ohio.
Opelika.....	\$0.46	\$0.33	\$0.76
Montgomery.....	.41	.28	.71
Enfauila.....	.62	.39	.82
Columbus.....	.46	.33	.55
Americus.....	.55	.42	.82
Albany.....	.55	.42	.82
Union Spings.....	.57	.44	.93
Troy.....	.62	.39	.82

23

EXHIBIT B.

Interstate Commerce Commission, Washington, D. C.

THE BOARD OF TRADE OF TROY, ALA.,
 v.
 THE ALABAMA MIDLAND RAILWAY COMPANY,
 The Central Railroad and Banking Company of
 Georgia et al.

Complaint.

Separate answer of the Louisville, New Albany and Chicago Railway Company to the above complaint.

And now comes the Louisville, New Albany and Chicago Railway Company, by G. W. Kretzinger, its attorney, and for answer to the complaint of the Board of Trade of Troy, Ala., against this defendant and numerous other defendants, this defendant answering says:

1. This defendant has no knowledge except that derived from hearsay as to the character, nature, business, and objects of the plaintiff's incorporation, and therefore can neither answer nor deny the averment in said complaint with respect thereto, but requires strict proof thereof.

2. This defendant denies that said complainant has shown itself in and by its complaint entitled under the interstate-commerce law to make or prosecute said complaint.

3. This defendant admits that it is a common carrier, but denies that it conducts its business as such "under a common control, management, or arrangement" with its codefendants above named, or any of them, and denies that the road or business of this defendant is under a common control with the business and roads of the other defendants above named.

Admits that the lines of said Alabama Midland Railway Company and the Central Railroad Company of Georgia are the only lines of railroad of all the defendants named in said complaint that directly reach the said city of Troy, as averred in said complaint, but denies that this defendant has any part or voice in fixing or making any rates over or from or to any points upon the roads of said Alabama Midland Railway and said Central Railroad of Georgia.

4. This defendant denies that it has any part or voice in making any of the rates stated in said complaint south of the Ohio River, and avers that it makes its own rates over its own line of road north of the Ohio River only; that that part of any through rate from points upon the lines of this defendant north of the Ohio River to any points upon its connecting lines south of the Ohio River which would or does come to this defendant is the rate and the amount of the rate which is fixed and maintained by this defendant for and over its lines to the Ohio River, the same being fixed and determined by this defendant without the control of or joint action with the other defendants above named or any of them.

5. This defendant denies that it has any control over, interest, or voice in making any of the rates between any of the points in said complaint named or given in any of the tables attached thereto.

6. This defendant denies that said complainant, or any shipper, or any other person is authorized by the interstate-commerce law to complain before this Commission, or to petition this Commission to inquire into, and denies that this Commission has any authority to inquire into or jurisdiction over the subject of the different rates or comparative rates of different lines as between each other, said lines originating at different points, even though they converge at or run to the same point or points; that the mere fact that different railroads charge different rates from different points of origination to the same point of destination does not and can not constitute discrimination against shippers or against said point of destination within the meaning of the interstate-commerce law; and even if it were true that higher rates were charged upon one railroad than upon another railroad to the same point of destination, said rates being made and fixed by separate and independent managements, that fact could not be put in issue between said two railroad companies and inquired into by this Commission upon the complaint of any individual whomsoever.

7. That section 4 of the interstate-commerce law does not attempt to control or regulate or to confer jurisdiction upon the Interstate Commerce Commission to inquire into, control, or regulate the rates for carriage of freight upon different lines originating at different points upon such separate lines, even though destined to a common point of destination to or through which said several lines may converge or pass.

That said section 4, as to the clause and provision designated and known as "the long and short clause haul," provides no remedy and vests in this Commission no authority to inquire into the uniform rates and charges upon one line in comparison with the uniform rates charged upon a different line, said two lines being under different and independent corporate control and management, even though one of said companies may charge a higher rate for the same distance than the other company.

That said section expressly limits the prohibition therein recited to and against discrimination in favor of a longer distance against a shorter haul "over the same line;" that is, said discriminating rates being made over the line by the carrier or company controlling and operating it. By reason whereof this defendant avers that said complainant has wholly failed in and by its said complaint to make or show any cause of action, injury, or ground for complaint under said section 4 or under any other section of said interstate-commerce law.

25 8. This defendant further answering denies that said petition contains or specifies any matter or thing against this defendant or makes any sufficient charges against it of a violation of any of the provisions of the interstate-commerce law which can or ought to subject this defendant to the trouble or expense of making answer thereto, and therefore asks upon the hearing hereof that this paragraph be treated in the nature of a demurrer or motion to dismiss said complaint as to this defendant.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY CO.,
By W. H. McDOEL, *General Manager.*

G. W. KRETZINGER, *Defendant's Attorney, Chicago, Ill.*

STATE OF ILLINOIS, *County of Cook, ss:*

W. H. McDoel, being duly sworn, deposes and says that he is the general manager of the above-named Louisville, New Albany and Chicago Railway Company, defendant, and that the matters and things set forth in the above answer of said defendant to the petition in said cause are true, as he verily believes.

W. H. McDOEL.

Subscribed and sworn to before me this 13th day of July, A. D. 1892.

[SEAL.]

CHAS. E. BYRNE,
Notary Public.

26

EXHIBIT C.

Interstate Commerce Commission.

BOARD OF TRADE, TROY, ALA.,

v.

THE GEORGIA RAILROAD AND BANKING COMPANY ET AL. }

The separate answer of the Illinois Central Railroad Company to the petition in the above-entitled cause respectfully states:

The respondent has no railroad line into Troy nor any within several hundred miles thereof; Montgomery is nearer the railroad of this company than Troy.

In all cases where goods are shipped to or from either Montgomery or Troy over any part of the respondent's lines, the respondent adds its rates to the rates given it by the connecting line to which it delivers such goods or from which such goods are received.

Respondent does not know whether the complainant is a body corporate, and therefore denies that it is.

The respondent denies that it has violated the interstate-commerce act, as alleged, in any respect, and protests against the wrongful practice whereby railroad companies all over the United States are made defendants to suits before the Commission, thus subjecting them to the trouble and the expense of defending matters which the particular railroad companies whose lines enter the districts or cities making the complaint are solely responsible for and interested in.

Respondent does not admit any of the allegations in the bill, and, having fully answered, prays to be dismissed.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
By M. C. MARKHAM, *Assistant Traffic Manager*.
JAMES FENTRESS, *Solicitor for Respondent*.

STATE OF ILLINOIS, *County of Cook, ss:*

M. C. Markham, being duly sworn, says he is the assistant traffic manager of the Illinois Central Railroad Company, defendant in this proceeding, and that the foregoing answer is true, as he verily believes.

Subscribed and sworn to before me this 9th day of July, 1892.

[SEAL.]

DAVID W. ROSS,
Notary Public.

27

EXHIBIT D.

BOSTON, MASS., *July 11, 1892.*

To the honorable INTERSTATE COMMERCE COMMISSION,
Washington, D. C.:

The New York and New England Railroad Company, one of the defendants in the action brought by the Board of Trade of Troy, Ala., representing its own road and that of the Providence and Springfield Railroad Company, of which it is the lessee, answers said complaint as follows, viz:

That it has no knowledge whatever of the Board of Trade of Troy, Ala., the objects for which it was organized, or the duties or responsibilities devolving upon the same.

It admits that it is a common carrier engaged in interstate commerce and subject to the act to regulate commerce, and that it does, in connection with other lines, partly by rail and partly by water, transport cotton and other commodities from various points in the South to various points in New England.

It has no knowledge of the location of the city of Troy, the distance it is from Montgomery, Ala., or the competition that the said cities respectively are engaged in, one with the other, nor is it informed as to the rates that obtain upon any particular class of traffic transported to or from said cities.

It has no knowledge of the volume of the receipts of cotton at Troy, or any other point in particular in the South, nor is it informed regarding the tariffs quoted upon said cotton or other commodities other than as stated in the bill of complaint, to which this answer is made.

Said defendant admits that it is a party to a through line from various points in the Southern States from which rates are quoted upon cotton and various other commodities to points reached by its own line, and appends hereto a tariff showing the rates it charges and receives upon cotton from all points in the South, and avers that it charges and receives said rates upon all cotton handled by it when coming to it at New York from Southern lines.

It respectfully submits that if the discrimination alleged in said bill exists, it is a discrimination to which it is in no sense a party, its rates, or proportions of the through rates established, being the same in all instances, regardless of the point of origination of the business.

Wherefore said defendant asks and demands that it be discharged from further attendance, and that said bill of complaint, so far as it is concerned, be dismissed.

CHARLES S. MELLEN,
General Manager.

28 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

Charles S. Mellen, being duly sworn, says that he is the general manager of the New York and New England Railroad Company and the Providence and Springfield Railroad Company, two of the defendants in the action brought by the Board of Trade of Troy, Ala., and that the answer herein set forth to said bill of complaint is the truth, to the best of his knowledge and belief.

Sworn to and subscribed before me this 11th day of July, 1892.

FRANK A. FARNHAM,
Notary Public.

29 EXHIBIT E.

Interstate Commerce Commission, July, 1892.

THE BOARD OF TRADE OF TROY, ALA.,	}
<i>v.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

Answer of the Fitchburg Railroad Company, one of the respondents.

And now comes the Fitchburg Railroad Company, and for answer to the first, third, fourth, fifth, eighth, and eleventh clauses in the petition in the above-entitled case says that it is ignorant whether the facts therein stated are true, and can neither admit nor deny the same.

As to the allegations contained in the second clause this respondent admits that it is a common carrier engaged in interstate commerce and is subject to the act to regulate commerce, but it denies that it forms any line under a common control, management, or arrangement for continuous carriage in the transportation of passengers and property from and to New York, Baltimore, and other Eastern points, or from and to the Western and Northwestern points and New Orleans and the Atlantic Seaboard to and from said city of Troy.

As to the allegations contained in the sixth clause this respondent is ignorant, and can neither admit nor deny the same, except that it denies that this respondent was guilty of unjust discrimination as set forth in said clause.

As to the allegations contained in the seventh clause, this respondent can neither admit nor deny the same, except that it denies that it has or does cut its regular tariff rates, or has and does pay rebates on cotton as alleged in said clause.

As to the allegations contained in the ninth clause this respondent is ignorant, and can neither admit nor deny the same, except that it denies that this respondent was guilty of any unjust discrimination as set forth in said clause.

As to the allegations contained in the tenth clause this respondent denies that it has been guilty of any of the offenses therein set forth.

This respondent further says that it neither publishes nor issues rates from any station on the line of its railroad to Troy, Ala., or to any other points mention in said petition, freight to and from said points being carried by the Great Southern Dispatch Fast Freight Line, an association with which this company has no connection, except that it is paid a regular

fixed rate between stations upon the Fitchburg Railroad and the Harlem River, the same rates in cents per hundred pounds on goods to or from all points mentioned in the tariffs of said fast freight line. If, therefore, there is any discrimination as set forth in said complaint, it must exist beyond the lines of the Fitchburg Railroad in territory not under the control of this respondent, and this respondent has no part in such discrimination and does not participate therein.

The tariff of said fast freight line is submitted herewith to the commission.

FITCHBURG RAILROAD COMPANY,
By H. S. MARCY, *President*.

JULY 15, 1892.

SUFFOLK, ss:

Then personally appeared Henry S. Marcy, president of the Fitchburg Railroad Company, and made oath that the allegations contained in the above answer are true to his knowledge or belief, before me,

[SEAL.]

GEO. A. TORREY,
Notary Public.

31

EXHIBIT F.

Before Board of Interstate Commerce.

IN THE MATTER OF COMPLAINT OF THE
Board of Trade of Troy, Ala.,
against
THE ALABAMA MIDLAND RAILWAY COM-
pany et al.

CONNECTICUT RIVER RAILROAD COMPANY,
Springfield, Mass., July 12, 1892.

Answer of the Connecticut River Railroad Company, a corporation organized under the laws of the State of Massachusetts, and doing business in said State.

The defendant is ignorant as to the truth of the matter stated in the first item of said complaint.

The defendant denies that it is a member of any line of common carriers engaged in the transportation to and from said city of Troy. Is ignorant as to the matter stated in the third item of complaint; also as to the matter stated in the fourth item of complaint, except that it denies that it has or ever has had any rate whatever for the shipment of goods from the city of Troy or from the city of Montgomery. It denies that it has unjustly discriminated against Troy in favor of Montgomery, as stated in the fifth item; also that it has unjustly discriminated against it, as stated in the sixth item. It denies that it cuts its regular tariff rates on cotton from said Montgomery, or that it does pay rebates on cotton shipped to and from said city, or in any way discriminates against the said Troy, as stated in said item No. 7. It denies, so far as this railroad is concerned, any of the matter stated in the eighth or ninth items.

It denies that it has been guilty of violating the act to regulate commerce, as stated in the tenth item of said complaint, or in any other manner. It is ignorant whether or not any unjust discriminations have injured the business of said Troy, but avers that it has not directly or indirectly regulated its tariffs or charges with any view to the injury of said Troy, and, so far as it is informed or believes, has no rates to be so changed or affected either to said city of Troy or to said city of Montgomery.

CONNECTICUT RIVER RAILROAD COMPANY,
By H. E. HOWARD, *Freight Traffic Manager*.

SPRINGFIELD, July 18, 1892.

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss*:

Then personally appeared the above-named H. E. Howard and made oath that the allegations of the foregoing answer are true to the best of his knowledge and belief, and subscribed said answer before me.

[SEAL.]

JONATHAN BARNES,
Notary Public.

32

EXHIBIT G.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,	}
complainant,	
v.	
THE ALABAMA MIDLAND RAILWAY COM-	}
pany, et al., defendants.	

Answer of the Kansas City, Memphis and Birmingham Railroad Company.

The Kansas City, Memphis and Birmingham Railroad Company, one of the defendants in the above-entitled proceeding, without waiving any insufficiency in the petition filed herein and insisting that the same does not show a breach of any legal duty upon its part to be performed, for answer to the complaint herein respectfully states:

I. It has no knowledge of the nature or purposes of complainant's organization and, so far as it and its officers are informed, it has never carried

or been asked to carry any property for any members of said association, complainant herein. And it asks that, if complainant insists that it has in any way discriminated against it or against said city, or charged or collected illegal rates on freight destined for or shipped by its members or any of them or to said city of Troy it be required to aver and prove the same specifically.

II. This defendant admits that it is a common carrier of freight, being a duly organized railroad corporation, and avers that its railroad runs from Memphis, Tenn., in a southeasterly direction through northern Mississippi to Birmingham, Ala., and that its said road does not connect with any railroad on which said Troy is located, the nearest point on its line to said Troy being Birmingham, Ala., whence the distance is nearly 100 miles via the Louisville and Nashville Railroad to Montgomery, and from the latter point 52 miles to said Troy via the Alabama Midland Railway, and that it, the defendant, has no connection, so far as control or management is concerned, with either of said companies.

III. Further answering, defendant states that, as to the correctness or incorrectness of the averments contained in the following paragraphs of the complaint, to wit, 4 to 8, inclusive, it has no knowledge, and that if they are correct they constitute no charge or ground of complaint against this defendant, which is not a party to or a participant in any of the rates or classifications therein mentioned, or in hauling such shipments as are therein described, since they do not pass over defendant's road.

33 IV. Defendant denies that it is guilty of the acts or any of them charged and enumerated in paragraphs 9, 10, and 11 of said complaint and denies each and every allegation contained therein, and in each subdivision thereof.

Wherefore, having fully answered, this defendant prays that the complaint in this proceedings be dismissed.

KANSAS CITY, MEMPHIS AND
BIRMINGHAM RAILROAD COMPANY,
By WALLACE PRATT and J. P. DANA, *its Attorneys*.

STATE OF MISSOURI, *County of Jackson, ss:*

Edward S. Washburn, being duly sworn, says that he is the freight-traffic manager of the Kansas City, Memphis and Birmingham Railroad Company, one of the defendants in this proceeding, and that the foregoing answer made by it is true, as he verily believes.

EDW. S. WASHBURN.

Subscribed and sworn to before me this 15th day of July, 1892.

[SEAL.]

JOHN H. ENMERT,
Notary Public.

(My commission as notary public will expire June 2, 1894.)

EXHIBIT H.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA., COMPLAINANT, }
v. }
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
defendants.

Answer of the Kansas City, Fort Scott and Memphis Railroad Company, wrongly named in said complaint as the Kansas City, Fort Scott and Gulf Railroad Company.

The Kansas City, Fort Scott and Memphis Railroad Company, one of the defendants in the above-entitled proceeding, without waiving any insufficiency in the petition filed herein and insisting that the same does not show a breach of any legal duty upon its part to be performed, for answer to the complaint herein respectfully states:

I. It has no knowledge of the nature or purposes of complainant's organization and, so far as it and its officers are informed, it has never carried or been asked to carry any property for any members of said association, complainant herein, nor has it issued, either by itself or in connection with any of the defendants herein, any rate or rates on freight either to or from said city, except as hereinafter stated. And it asks that, if complainant insists that it has in any way discriminated against it or against the city, or charged or collected illegal rates on freight destined for or shipped by its members or any of them or to the said city of Troy, it be required to aver and prove the same specifically.

II. This defendant admits that it is a common carrier of freight, being a duly organized railroad corporation, and avers that its railroad runs from Memphis, Tenn., in a northwestly direction through Arkansas, Missouri, and Kansas, to Kansas City, Mo., and that its said road does not connect with any railroad on which said Troy is located, the nearest point on its line to said Troy being Memphis, Tenn., some 400 miles from Troy.

III. Further answering, defendant states that, as to the correctness or incorrectness of the averments contained in the following paragraphs of the complaint, to wit, 4 to 8 inclusive, it has no knowledge, and that, if they are correct, they constitute no charge or ground of complaint against this defendant, which is not a party to or a participant in any of the rates or classifications therein mentioned, or in hauling such shipments as are therein described, since they do not pass over defendant's road.

35 IV. As to the allegations, and each of them contained in paragraph 9 of said complaint, defendant denies that it discriminates against Troy and in favor of Montgomery, Columbus, or other points, and denies that the tables referred to in and made a part of said complaint show any such discrimination on the part of defendant or constitute any evidence of such discrimination, and defendant avers that on shipments of freight passing over its road, whether destined to Montgomery, Troy, or any other points east thereof, in favor of which complainant alleges the defendants discriminate against Troy, if any such shipments there have been made, it, the said defendant, received the same amount for its portion of the haul without regard to the point of destination, as the through

rate from points on its road to the points above referred to has been and is made by adding defendant's rate to Memphis to the rate from Memphis to such southeastern points, without regard to where the latter are located.

V. Defendant denies each and every allegation contained in paragraphs 10 and 11 of said complaint, and in each subdivision thereof.

Wherefore, having fully answered, this defendant prays that the complaint is this proceeding be dismissed.

KANSAS CITY, FORT SCOTT AND MEMPHIS
RAILROAD COMPANY,
By WALLACE PRATT and J. P. DANA, *its Attorneys*.

STATE OF MISSOURI, *County of Jackson, ss :*

Edward S. Washburn, being duly sworn, says that he is the freight-traffic manager of the Kansas City, Fort Scott and Memphis Railroad Company, one of the defendants in this proceeding, and that the foregoing answer made by it is true, as he verily believes.

EDWD. S. WASHBURN.

Subscribed and sworn to before me this 15th day of July, 1892.

[SEAL.]

JOHN H. EMMERT,
Notary Public.

(My commission as notary public expires June 2, 1894.)

36

EXHIBIT I.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,
v.
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

* The Pennsylvania Railroad Company, one of the respondents in the above-stated case, for answer to the complaint filed therein, says :

1. That in respect to the matters contained in the said complaint it has not violated any of the provisions of the act to regulate commerce.

2. That it carries freight over its line as part of four separate through routes from the North to Montgomery, Ala., and two separate through routes from the North to Troy, Ala., namely :

To Montgomery, Ala., and Troy, Ala.

Via the Pennsylvania Railroad, the Cumberland Valley Railroad, the Shenandoah Valley Railroad, the Norfolk and Western Railroad, and the East Tennessee, Virginia and Georgia Railway.

Via the Philadelphia, Wilmington and Baltimore Railroad, the Baltimore and Potomac Railroad, the Washington Southern Railway via Alexandria, and the Richmond and Danville Railroad and connections.

To Montgomery, Ala.

By its main line to Pittsburg and thence via the Pittsburg, Cincinnati, Chicago and St. Louis Railway via Cincinnati, and the Cincinnati, New Orleans and Texas Pacific Railway.

Via its main line to Pittsburg and thence via the Pittsburg, Cincinnati, Chicago and St. Louis Railway, via Cincinnati and Louisville, and the Louisville and Nashville Railroad.

That by none of these routes stated above is freight transported to Troy, Ala., via Montgomery, Ala., and therefore this respondent is not, directly or through its connections, a party to the rates which are complained of in the petition of the complainant.

3. That it receives its proportion of the through rate for transportation by the routes above named; that such through rates are not fixed by itself; the rates by the first two routes named to Montgomery and the two routes named to Troy have been fixed by an association of corporations known as the Southern Railway and Steamship Association, of which the Pennsylvania Railroad Company is not a member, but accepts such rates as the companies members of such association have directed it to charge.

37 That the rates for the third and fourth routes to Montgomery referred to above are fixed by the Trunk Line Association, of which this respondent and many other companies are members, and that such rates are just and reasonable.

4. That for further specification of the justification of the rates by the associations aforesaid, and other matters of defense and reply, reference is made to the answers of the other defendants.

Wherefore this respondent prays that the said complaint be dismissed.

THE PENNSYLVANIA RAILROAD COMPANY,
By WILLIAM H. JOYCE, *General Freight Agent.*
JAMES A. LOGAN, *of Counsel for Defendant.*

STATE OF PENNSYLVANIA,

City of Philadelphia:

Before me, the undersigned, personally appeared William H. Joyce, who, being duly sworn, doth depose and say that he is the general freight agent of the Pennsylvania Railroad Company, one of the defendants in this proceeding, and that the foregoing answer of that company is true as he verily believes.

WILLIAM H. JOYCE.

Sworn and subscribed before me this 22d day of July, 1892.

[SEAL.]

JAMES M. CARTNEY,
Notary Public.

38

EXHIBIT K.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,

v.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

The Philadelphia and Reading Railroad Company, one of the above-named defendants, for its separate answer to the complaint in this proceeding, respectfully states:

1. That it has no knowledge or information as to the matters set forth in the first paragraph of said complaint, but for the purposes of this proceeding is willing to admit the truth of the averments of said paragraph.

2. That this defendant is a common carrier engaged to some extent in interstate commerce, and so far as so engaged is subject to the act to regulate commerce; that some of the other defendants named are, as this defendant is informed and believes, like common carriers, and as to others of the defendants named this defendant has no knowledge or information; that there is no common control or management among the large number of companies named as defendants, but some of them have arrangements for continuous carriage over their lines. This defendant has not sufficient information to answer fully as to the matters set forth in the second paragraph of said complaint and prays that if material they may be proven.

3. That as to the matters set forth in the third to eleventh paragraphs, both inclusive, of said complaint, this defendant has no knowledge or information sufficient to found a belief, and therefore denies the same, and prays that if material they may be proven.

4. That this defendant has not made nor published any of the rates complained of, nor made any distribution thereof, and has no interest in said rates.

Wherefore this defendant prays that the complaint in this proceeding be dismissed.

THE PHILADELPHIA AND READING RAILROAD COMPANY,
By JOHN TAYLOR, *General Traffic Manager*.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

John Taylor, being duly sworn, says that he is the general traffic manager of the Philadelphia and Reading Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true as he verily believes.

JOHN TAYLOR.

Sworn and subscribed before me this 22d day of July, 1892.

[SEAL.]

C. K. KLINK,
Notary Public.

T. H. JANVIER,
Counsel for the Philadelphia and Reading Railroad Company.

39

EXHIBIT L.

Interstate Commerce Commission.

BOARD OF TRADE OF TROY, ALA.,
v.

THE ALABAMA MIDLAND RAILWAY COMPANY;
The Central Railroad and Banking Company of
Georgia, H. M. Comer and others, receivers, etc.;
The Metropolitan Steamship Company, etc.

The answer of the above-named defendant, The Metropolitan Steamship Company, to the petition in the above-entitled matter, respectfully shows:

1. That the defendant, The Metropolitan Steamship Company, is a common carrier of property only and not of passengers on the high seas

between the port of New York and the port of Boston, State of Massachusetts, and between no other places or ports. That the said defendant does not, with any of the other defendants named in said petition, form a line or lines for any of the purposes named in said petition, nor is it engaged with them or any of them, under a common control, management, or arrangement for continuous carriage of passengers or property between the points named in said petition.

2. That if any of the defendants named in said petition ship any property coming originally from the city of Troy, Ala., over this defendant's steamship line from New York to Boston, or any property coming from Boston destined to Troy, Ala., such shipment is made at a fixed and arbitrary rate per hundred pounds for the carriage between Boston and New York, which sum is precisely the same, whether said property comes originally from Troy or Montgomery, or is destined to Troy or Montgomery.

3. That as to any other matter or thing alleged in said petition this defendant has no knowledge whatever, nor any information sufficient to form a belief.

H. F. DIMOCK.

CITY AND COUNTY OF NEW YORK, ss:

H. F. Dimock, being duly sworn, says that he is the agent for the defendant, The Metropolitan Steamship Company, in the above-entitled answer, and that the matters set forth in the foregoing answer are true as he verily believes.

H. F. DIMOCK.

Sworn to and subscribed before me this 22d of July, 1892.

WM. SCHNEIDER,

Notary Public, New York County.

40

EXHIBIT M.

Interstate Commerce Commission.

BOARD OF TRADE OF TROY, ALA.,
v.
ALABAMA MIDLAND RAILWAY COMPANY
and others. }

Answer of the Boston and Maine Railroad.

1. The Boston and Maine Railroad, in common with other lines and systems north of what are known as the Southern Gateways—such, for example, as Hagerstown, Md., and Alexandria, Va.—quotes arbitraries covering the various classes of freight, which arbitraries are used regardless of the point in the territory south of such gateways where the freight originates. It follows that the discrimination, if any, complained of by the complainant in this case, must arise on the railroad or railroads forming that part of the line which lies south of said gateways and can not be imputed to and is not participated in by the Boston and Maine Railroad and, as it believes, by any other railroad or railroads forming part of the line north of said gateways.

2. In cases where a water carrier forms part of the line of transportation—for example, the Savannah Steamship Line or the Metropolitan Steamship Line—arbitraries are quoted from Boston without regard to the point where the traffic originates, so that, as far as the Boston and Maine Railroad is concerned, the discrimination complained of, if any, must originate with the railroad or railroads constituting the line southerly of Boston and can not be imputed to and is not participated in by the Boston and Maine Railroad.

3. The Boston and Maine Railroad denies that there is any other matter or thing alleged or stated in said complaint which it is necessary, material, or proper for this defendant to make answer unto, and prays that as against this defendant said complaint may be dismissed.

BOSTON AND MAINE RAILROAD,
By FRANK JONES, *President*.

BOSTON, *July* 20, 1892.

SUFFOLK, ss :

Then appeared William F. Berry, general traffic manager of said Boston and Maine Railroad, and made oath that the statements in the foregoing answer contained are true to the best of his knowledge, information, and belief.

SIGOURNEY BUTLER,
Justice of the Peace.

41

EXHIBIT N.

THE BOARD OF TRADE OF TROY, ALA., }
v. }
THE MAINE CENTRAL RAILROAD COMPANY. }

MAINE CENTRAL RAILROAD COMPANY,
Portland, July 22, 1892.

EDWARD A. MOSELEY,

Secretary Interstate Commerce Commission, Washington, D. C.:

The above-named defendant for answer to the complaint in this proceeding respectfully states that it has no direct existing arrangement with either the Alabama Midland Railway Company or the Central Railroad and Banking Company of Georgia for through rates or traffic between the city of Troy, Ala., and any station or stations on its system.

True, it is a member of fast freight lines which, in connection with some of the Southern railway lines, form a continuous route rate for cotton to Lewiston, Me., but it has not in any way or at any time knowingly assented to a rate, such as is cited in the complaint referred to, higher from a shorter than from a longer distance over the same route and in the same direction, the shorter being included in the longer.

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

THE MAINE CENTRAL RAILROAD COMPANY,
By PAYSON TUCKER, *Vice-President and General Manager.*

Witness :

T. R. KENTING.

STATE OF MAINE, *County of Cumberland*, ss :

Payson Tucker, being duly sworn, says that he is the vice-president and general manager of the Maine Central Railroad Company, defendant in this proceeding, and that the foregoing answer is true, as he verily believes.

Subscribed and sworn to before me this 22d day of July, 1892.

HORACE G. PARKMAN,
Justice of the Peace.

42

EXHIBIT O.

Before Interstate Commerce Commission at Washington, D. C.

BOARD OF TRADE, TROY, ALA.,	}
v.	
ALABAMA MIDLAND RAILROAD COMPANY ET AL.	}

Comes the Western Railway of Alabama, one of the defendants in this case, and for answer says :

1. For answer to the first, sixth, and eleventh paragraphs of complaint, it has no personal knowledge of the facts therein stated, but denies the same and demands that they be proven, if true.

2. For answer to the second and fourth paragraphs of the complaint, it admits the facts averred to be true except the allegations that defendants are under a common control, management, or arrangement, and that they collect a higher rate on shipments to Troy than other points under substantially similar circumstances or conditions, which it denies.

3. For answer to the third paragraph, it admits the facts therein stated.

4. For answer to the fifth, seventh, and tenth paragraphs of said complaint, it denies emphatically each and every averment therein contained.

5. For answer to the eighth paragraph of the complaint, it says that it denies any unjust discrimination against Troy in favor of Montgomery or any other city, but admits that, by the consent of the honorable Interstate Commerce Commission, the export rates have for years been made on what is known as the lowest combination. To illustrate : The present rate from Montgomery to Savannah and New Orleans is 43 cents per 100 pounds ; the ocean rate from Savannah to Liverpool is 53 cents, the total from Montgomery would be 93 cents ; while ocean rate from New Orleans might be 63 cents to Liverpool, making the same total from New Orleans as from Savannah, which would necessarily lessen our inland proportion 10 cents per 100 pounds.

6. For answer to the ninth paragraph of the complaint, it says that the city of Troy is not similarly situated to the cities of Montgomery, Columbus, and others, in whose favor the unjust discriminations are alleged to exist. The table of rates attached to this paragraph the defendant has not been able to verify, and therefore neither denies nor admits the same to be correct.

Wherefore this defendant in these proceedings be dismissed.

WESTERN RAILWAY OF ALABAMA,
By R. E. LUTZ, *Traffic Manager.*
GEORGE P. HARRISON,
Attorney for Defendant.

43 STATE OF ALABAMA.

County of Montgomery:

R. E. Lutz, being duly sworn, says that he is the traffic manager of the Western Railway of Alabama, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

R. E. LUTZ, *Traffic Manager.*

Sworn and subscribed to before me this 25th of July, 1895.

[SEAL.]

GEORGE STUART,
Notary Public.

44 EXHIBIT P.

The Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,

v.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

In answer to the petition filed in the above-entitled cause the Canadian Pacific Railway Company, one of the respondents therein, says in its own behalf:

1. That this respondent neither admits nor denies the existence of an organized body known as the Board of Trade of Troy, Ala., having no knowledge thereof, but leaves the petitioner to its proof in such behalf.

2. That this respondent admits itself to be a common carrier engaged in the transportation of passengers and property under joint traffic arrangements with many of the other respondents named in the aforesaid petition, but denies such traffic arrangements as to some of the respondents aforesaid, and as to such joint traffic as first aforesaid admits that it is subject to the provisions of the act to regulate commerce which have application thereto.

3. That this respondent denies that it has cut the tariff rates or paid rebates on shipments of cotton to or from the city of Montgomery, Ala., as alleged in the seventh averment of said petition.

4. That this respondent neither admits nor denies the truth of the remaining averments of said petition, having no knowledge thereof, and leaving the petitioner to its proof in said behalf.

5. That this respondent denies any violation by itself of the act to regulate commerce in the joint carriage with other respondents of any of the traffic set forth in the petition.

6. This respondent further answering, says, on information or belief, that it is not directly interested in business to or from Troy, Ala.; that it has never published or authorized any rates for traffic to or from Troy or Montgomery, Ala.; that no traffic to or from said points bearing the name of this respondent are in existence, and that if any traffic originating at said places should pass over this respondent's line this respondent would simply receive its proportion of the through rate as fixed by the line originating the traffic without any knowledge or responsibility as to whether the originating or any intermediate line had violated the act to regulate commerce.

45 7. That this petitioner is not therefore entitled to any relief as against this respondent as in said petition demanded, and this respondent prays to be hence dismissed.

THE CANADIAN PACIFIC RAILWAY COMPANY,
By G. M. BOSWORTH,
Assistant Freight Traffic Manager.
A. C. RAYMOND,
Attorney for Canadian Pacific Railway Company.

DOMINION OF CANADA,
City of Toronto, ss:

G. M. Bosworth, being duly sworn, says that he is the assistant freight traffic manager of the Canadian Pacific Railway Company; that he has read the foregoing answer, and that the allegations thereof are true of his own knowledge or belief.

G. M. BOSWORTH.

Sworn to before me at Chicago this 20th day of July, A. D. 1892.

[SEAL.]

PHILIP A. HOYNE,
A Commissioner of Deeds for Alabama in Chicago, Ill.

46 EXHIBIT Q.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,
v.
THE ALABAMA MIDLAND RAILWAY COMPANY. }

The Alabama Midland Railway Company, one of the respondents named in the above petition of complaint, for answer thereto respectfully shows:

First. That it has no sufficient information to answer the statements contained in the first paragraph of the petition and therefore calls for strict proof of such statements.

Second. This respondent admits that the defendants are common carriers engaged in interstate commerce and are subject to the act to regulate commerce; it also admits that defendant form several lines over which through shipments are made on through bills of lading; but in no other respect are the defendants, so far as is known to this defendant, except this defendant and the Savannah, Florida and Western Railway Company, under any common management, control, or arrangement for the continuous carriage and transportation of passengers and property from any point to the city of Troy; this defendant and the Savannah, Florida and Western Railway are under a common control for the continuous carriage of passengers and property between points on their respective lines.

Third. It admits the allegations of the third paragraph of the complaint.

Fourth. To the allegations contained in the fourth paragraph of the complaint this respondent answers that said allegations are true only in part; that in so far as it is alleged that a greater rate is charged to Troy, Ala., than to Montgomery, Ala., "under substantially similar circumstances and conditions," the statements in said paragraph are not true. It is admitted that the rates and distances stated in the fourth paragraph of the petition are substantially correct; but respondent denies that these

admitted facts are in violation of the fourth section of the interstate-commerce act for the reason that the prohibition of said section in said act is limited to cases in which the circumstances and conditions are substantially similar.

Respondent avers that the circumstances and conditions at Montgomery, Ala., are totally dissimilar from those which exist at Troy, Ala. Montgomery is situated on a navigable river, is the terminus of the Montgomery and Eufaula Railroad, the Alabama Midland Railway, and the Savannah, Americus and Montgomery Railway, and is located on the lines of the Louisville and Nashville Railroad and the Western Railway of Alabama, and is thus afforded many outlets. Foreign ports as well as the Northern and Eastern markets of the United States are reached by Montgomery through New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Charleston, West Point, and Norfolk; the rail lines leading to these several seaports and the all-rail lines through the gateways of the Ohio River necessarily compete with the water lines in order to secure a portion of Montgomery's business. The rates to and from Montgomery through these Atlantic and Gulf seaports are made by the water lines and can not be controlled by the rail lines running into Montgomery. Montgomery and the surrounded country, Troy, Ala., included, are benefited by the competition at Montgomery; the rates to and from Troy and other localities in essential respects similarly situated have been lowered by reason of this competition, and are themselves relatively fair and reasonable.

Fifth. Respondent denies that the rate on phosphate rock to Troy as compared with the rate to Montgomery is an unjust discrimination against Troy. This commodity is produced at mines situated on the coast of South Carolina and throughout the State of Florida. Transportation from mines situated on the Gulf coast of Florida is now competitive between water and rail lines to Montgomery, Ala.

All shipments of phosphate rock to Montgomery do not pass through Troy. For this and other reasons set forth in respondent's answer to paragraph No. 4 of the complaint the rates do not constitute an unjust discrimination against Troy.

Sixth. This respondent denies the allegation that the rates in question discriminate unjustly against Troy for the reasons set forth in respondent's answer to paragraphs Nos. 4 and 5 of the complaint; and furthermore, for the reason that this respondent is only one of the many transportation lines at Montgomery competing for this business as against all-water and all-rail lines.

This respondent does not believe that the points alleged in the sixth paragraph to be competitive with Troy, to wit: Rome, Cedartown, Dalton, Columbus, Carrollton, Opelika, and Anniston, have any effect upon the cotton receipts at Troy, or that under any conditions the cotton tributary to these points could be diverted to find a market at Troy.

This respondent is not advised as to the rates from Montgomery to New Orleans or Mobile, and denies any responsibility for the making of same. The fact that this respondent charges its local rates on cotton from Troy to Montgomery does not constitute a discrimination against Troy.

Seventh. This defendant denies the allegations of the seventh paragraph of the complaint, so far as it is concerned in such charges.

Eighth. This defendant admits that rates on shipments of export cotton from Montgomery are made in the manner stated in the eighth paragraph of the complaint, which sometimes results in a reduction of the proportion of the rate received by the railroad line to the port, but it denies that this state of facts constitutes a violation of the interstate commerce act, and it denies that it is in any way an unjust discrimination against Troy in favor of Montgomery or other cities, or that it unjustly discriminates against shipments which terminate at seaports in favor of shipments for export. This defendant here calls attention to the facts set forth in the fourth paragraph of this answer as showing why this state of facts is not an unjust discrimination against Troy; on account of the competition by rail and water and other controlling circumstances and conditions which exist at Montgomery, and which do not exist at Troy, it is necessary for the rail lines leading to the several seaports to equalize the through rate on export cotton to the extent necessary to meet the advantage which any particular seaport may temporarily have over the others on account of lower sea rates from that particular port.

Ninth. This defendant shows that the ground of the complainant contained in the ninth paragraph of the petition is that Troy merchants can not undersell Brantley, Ozark, and Dothan merchants in their home markets, and it further shows that it would be working a great injustice if the Troy merchants could undersell merchants in the places named in their home markets.

Tenth. This defendant denies the conclusions and statements set forth in the tenth and eleventh paragraphs of the petition.

Wherefore it is prayed as to this respondent that the complaint be dismissed.

THE ALABAMA MIDLAND RAILWAY COMPANY,
By ERWIN, DU BESHAWN & CHISHOLM.

STATE OF GEORGIA, *County of Chatham* :

Personally appeared before me, C. D. Owens, who says he is the traffic manager of the above-named defendant, and that matters set forth in the foregoing answer are true as he verily believes.

W. D. OWENS,
Traffic Manager.

Sworn to and subscribed before me this 30th day of July, 1892.

[SEAL.]

WARING RUSSELL, Jr.,
Notary Public and ex officio J. P.

49

EXHIBIT R.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,	}
v.	
THE SAVANNAH, FLORIDA AND WESTERN RAILWAY Company.	

The Savannah, Florida and Western Railway Company, one of the respondents named in the above petition of complaint, for answer thereto respectfully shows:

First. That it has not sufficient information to answer the statements

contained in the first paragraph of the petition and therefore calls for strict proof of such statements.

Second. This respondent admits that the defendants are common carriers engaged in interstate commerce and are subject to the act to regulate commerce; it also admits that defendants form several lines over which through shipments are made on through bills of lading, but in no other respect are the defendants, so far as is known to this defendant, except this defendant and the Alabama Midland Railway, under any common management, control, or arrangement for the continuous carriage and transportation of passengers and property from any point to the city of Troy; this defendant and the Alabama Midland Railway are under a common control for the continuous carriage and transportation of passengers and property between points on their respective lines.

Third. It admits the allegations of the third paragraph of the complaint.

Fourth. To the allegations contained in the fourth paragraph of the complaint this respondent answers that said allegations are true only in part; that in so far as it is alleged that a greater rate is charged to Troy, Ala., than to Montgomery, Ala., "under substantially similar circumstances and conditions," the statements in said paragraph are not true. It is admitted that the rates and distances stated in the fourth paragraph of the petition are substantially correct; but respondent denies that these admitted facts are in violation of the fourth section of the interstate commerce act for the reason that the prohibition of said section in said act is limited to cases in which the circumstances and conditions are substantially similar.

Respondent avers that the circumstances and conditions at Montgomery, Ala., are totally dissimilar from those which exist at Troy, Ala. Montgomery is situated on a navigable river, is the terminus of the Montgomery and Enfaula Railroad, the Alabama Midland Railway, and
50 the Savannah, Americus and Montgomery Railway, and is located on the lines of the Louisville and Nashville Railroad and the Western Railway of Alabama, and is thus afforded many outlets. Foreign port, as well as the Northern and Eastern markets of the United States are reached by Montgomery through New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Charleston, West Point, and Norfolk; the rail lines leading to these several seaports and the all-rail lines through the gateways of the Ohio River necessarily compete with the water lines in order to secure a portion of Montgomery's business. The rates to and from Montgomery through these Atlantic and Gulf seaports are made by the water lines and can not be controlled by the rail lines running into Montgomery. Montgomery and the surrounding country, Troy, Ala., included, are benefited by the competition at Montgomery; the rates to and from Troy and other localities in essential respects similarly situated have been lowered by reason of this competition, and are themselves relatively fair and reasonable.

Fifth. Respondent denies that the rates on phosphate rock to Troy, as compared with the rate to Montgomery, is an unjust discrimination against Troy. This commodity is produced at mines situated on the coast of South Carolina and throughout the State of Florida. Transportation from mines situated on the Gulf coast of Florida is now competitive between

water and rail lines to Montgomery, Ala. All shipments of phosphate rock to Montgomery do not pass through Troy. For this and other reasons set forth in respondent's answer to paragraph No. 4 of the complaint, the rates do not constitute an unjust discrimination against Troy.

Sixth. This respondent denies the allegation that the rates in question discriminate unjustly against Troy, for the reasons set forth in respondent's answer to paragraphs Nos. 4 and 5 of the complaint, and furthermore, for the reason that this respondent is only one of the many transportation lines at Montgomery competing for this business, as against all-water and all-rail lines.

This respondent does not believe that the points alleged in the sixth paragraph to be competitive with Troy, to wit, Rome, Cedartown, Dalton, Columbus, Carrollton, Opelika, and Anniston, have any effect upon the cotton receipts at Troy, or that under any conditions the cotton tributary to these points could be diverted to find a market at Troy.

This respondent is not advised as to the rates from Montgomery to New Orleans or Mobile, and denies any responsibility for the making of the same. The fact that this respondent charges its local rates on cotton from Troy to Montgomery does not constitute a discrimination against Troy.

Seventh. This defendant denies the allegations of the seventh paragraph of the complaint so far as it is concerned in such charges.

Eighth. This defendant admits that rates on shipments of export cotton from Montgomery are made in the manner stated in the eighth
51 paragraph of the complaint, which sometimes result in a reduction of the proportion of the rate received by the railroad line to the port, but it denies that this state of facts constitutes a violation of the interstate-commerce act, and it denies that it is in any way an unjust discrimination against Troy in favor of Montgomery or other cities, or that it unjustly discriminates against shipments which terminate at seaports in favor of shipments for export. This defendant here calls attention to the facts set forth in the fourth paragraph of this answer as showing why this state of facts is not an unjust discrimination against Troy; on account of the competition by rail and water and other controlling circumstances and conditions which exist at Montgomery and which do not exist at Troy it is necessary for the rail lines leading to the several seaports to equalize the through rate on export cotton to the extent necessary to meet the advantage which any particular seaport may temporarily have over the others on account of lower sea rates from that particular port.

Ninth. This defendant shows that the ground of the complaint contained in the ninth paragraph of the petition is that Troy merchants can not undersell Brantley, Ozark, and Dothan merchants in their home markets, and it further shows that it would be working a great injustice if the Troy merchants could undersell merchants in the places named in their home markets.

Tenth. This defendant denies the conclusions and statements set forth in the tenth and eleventh paragraphs of the petition.

Wherefore it is prayed as to this respondent that the complaint be dismissed.

THE SAVANNAH, FLORIDA AND WESTERN RAILWAY,
By ERWIN, DU BESUAN & CHISHOLM, *its Attorneys.*

STATE OF GEORGIA, *County of Chatham :*

Personally appeared before me C. D. Owens, who says he is the traffic manager of the above-named defendant and that the matters set forth in the foregoing answer are true, as he verily believes.

C. D. OWENS,
Traffic Manager.

Sworn to and subscribed before me this 30th day of July, 1892.

[SEAL.]

WARING RUSSELL, Jr.,
Notary Public and ex officio Justice of the Peace.

52

EXHIBIT S.

Before the Interstate Commerce Commission.

BETWEEN THE BOARD OF TRADE OF TROY,	}
Ala., petitioner,	
and	
THE ALABAMA MIDLAND RAILWAY COM-	}
pany, The Central Railroad Company of New	
Jersey, and others, respondents.	

On petition.—Verified June 27, 1892.

The separate answer of the Central Railroad Company of New Jersey to the complaint of the Board of Trade of Troy, Ala., respectfully shows :

First. It has no knowledge of information sufficient to admit or deny or to form a belief as to the allegations contained in the petitioner's petition which relate to the petitioner's status and business, or to the business done by the respondent companies other than itself.

Second. It denies that it makes through rates from New York or other seaboard points, or from Baltimore to Troy and Montgomery, Ala., or that it is a member of any line making through rates from New York or other seaboard points, or from Baltimore to Troy and Montgomery, Ala.

Wherefore it prays that as to it the prayer of the petition should be denied and the petition dismissed.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.
ROBERT W. DE FOREST, *Counsel.*

STATE, COUNTY, AND CITY OF NEW YORK, ss :

Samuel Knox, being duly sworn according to law, on his oath saith : That he is the secretary of the respondent, The Central Railroad Company of New Jersey ; that he has read the foregoing answer and that the same is true, except as to such matters as is stated on information and belief, and as to those he believes it to be true.

SAM KNOX.

Subscribed and sworn to before me this 3d day of August, 1892.

[SEAL.]

ARCHIBALD C. WEEKS,
Notary Public, Kings County.

Certificate filed in New York County, State of New York.

Interstate Commerce Commission.

BOARD OF TRADE OF TROY, ALA.,
v.
ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

Separate answer of the Louisville and Nashville Railroad Company.

This respondent has no knowledge nor information on which to form a belief as to the organization styled the Board of Trade of Troy, Ala., or what the purposes of such organization or association may be.

This respondent is a common carrier, but is not under any common control, management, or arrangement with any other of the defendants named for the continuous carriage and transportation of passengers and property from any point to the city of Troy, Ala.

Respondent states that the city of Troy, Ala., is located on the Mobile and Girard Railroad and on the Alabama Midland Railway and that such freights as it may transport destined to the city of Troy from points on or reached via the lines of the Louisville and Nashville Railroad are brought to Montgomery and there delivered to the Montgomery and Eufaula Railroad for transportation to Union Springs; thence via the Mobile and Girard Railroad to Troy; or delivered at Montgomery, Ala., to the Alabama Midland Railway for transportation to Troy. This respondent is not advised as to what competition there is, if any, between the city of Troy and the city of Montgomery. That likewise freights originating at Troy and forwarded to points on or reached via the Louisville and Nashville Railroad are received by this respondent at Montgomery from either the Montgomery and Eufaula Railroad or the Alabama Midland Railway, as the case may be.

This respondent denies that in the transaction of its business to or from the city of Montgomery it has or does cut regular tariff rates on cotton or any other product from said city to other points, or that it has paid or does pay rebates on cotton shipped to or from said city of Montgomery, or that it has discriminated or does in any way discriminate unjustly in favor of said city of Montgomery against the city of Troy or other points to the great injury and damage of the latter.

This respondent understands it to be the usual and general practice on the part of the lines engaged in transportation of export cotton from Montgomery to make through rates to point of destination on the
54 lowest combination of inland and ocean rates and such lines as may be prepared to participate in such business compete over their respective routes at the through export rate so made. This respondent does not make through rates from Troy, Ala., on cotton for export.

This respondent denies that the rates by it or connecting lines from Northwestern and Western points unjustly discriminate against Troy in favor of Montgomery, Columbus, and other points. It is doubtless true that goods from the West can be shipped to Columbus, Ga., and thence to Brantly, Ala., on the Mobile and Girard Railroad, for a less through rate than if shipped direct from the West to Troy and thence reshipped to Brantly, and that goods can be shipped from the West to Montgomery,

Ala., and thence reshipped to Ozark and Dothan for less through rates than if shipped from the West to Troy and thence to Ozark and Dothan. In other words, this respondent represents that the aggregate charge for shipments from points on its lines or its connections to Troy, Ala., is arrived at on the same basis as the aggregate charge from the same points to Dothan, Ozark, or Brantley, Ala., and that this adjustment of rates is not a discrimination against the merchants of Troy, Ala. That the rate from Montgomery, Ala., to Troy is less than from Montgomery to Ozark, and that such rate to Ozark is not as high as the aggregate of the rate Montgomery to Troy plus the rate Troy to Ozark, both points being located on the line of the Alabama Midland Railway, is doubtless true.

So far as the transportation of freights by it destined to Troy, Ala., is concerned, this respondent denies that it charges or collects a greater compensation for the transportation of like kind of property under substantially similar circumstances for a shorter than for a longer distance over the same line and in the same direction, the shorter being included in the longer distance. Respondent denies that it unjustly discriminated against Troy in favor of her competitors, thereby subjecting the former to an unreasonable disadvantage and giving the latter an unreasonable preference or advantage, and also denies that so far as it participates therein, its rates to Troy are excessive, unreasonable, or unjust in themselves.

Having fully answered, this respondent prays to be hence dismissed.

ED. BAXTER,
Solicitor for Respondent.

S. R. Knott, first vice-president of the Louisville and Nashville Railroad Company, the above-named respondent, says the statements contained in the foregoing answer are true to the best of his knowledge and belief.

S. R. KNOTT.

Subscribed and sworn to before me by S. R. Knott this the 8th day of August, 1892.

[SEAL.]

G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

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EXHIBIT U.

Before the Interstate Commerce Commission.

BOARD OF TRADE OF TROY, ALA.,	}
<i>against</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY	
and others.	

The Central Railroad and Banking Company of Georgia, and H. M. Comer, receiver, to the complaint in the above-stated cause, respectfully shows:

First. This respondent presumes that it is true that the complainant is an association of citizens and business men of Troy, Ala., as stated in the complaint, based on information received.

Second. This respondent admits that the respondents named are common carriers engaged in interstate commerce, and as such subject to the act

to change and regulate commerce, and that they have several lines, as stated in complaint; but this respondent has no common control or management with any of the corporations named in the complaint, with the exception of the Ocean Steamship Company of Savannah.

Third. Respondent admits that the Alabama Midland and this respondent are the only ones of the defendant carriers that directly reach the city of Troy, and are the initial roads in all of the said lines leading from Troy.

Fourth. Respondent admits that Troy and Montgomery are to a certain extent in active competition with each other, and that Troy is located at the intersection of the Alabama Midland and this respondent, but this respondent denies that so far as its line is concerned the short distance to Troy is included in the distance to Montgomery, and, therefore, respondent avers that the fourth allegation in the complaint has no reference to this respondent.

Fifth. Respondent denies that it unjustly discriminates against Troy and in favor of Montgomery in rates charged and collected on phosphate rock from South Carolina and Florida, but, on the contrary, avers that the rates charged to Troy are just and reasonable. And respondent here asserts that shipments over its line to Montgomery do not go by way of Troy.

Sixth. This respondent does not know whether the receipts of cotton at Troy and the business at that point for the season of 1892 are correctly stated in the complaint, but denies that it unjustly discriminates in freight rates on cotton against Troy in favor of Montgomery, or
56 other competitors of Troy, as named in the sixth allegation to the complaint.

Seventh. With reference to the allegation, on information and belief, that this respondent has and does cut its regular tariff rate on cotton from Montgomery to other points and does pay rebates on cotton shipped to and from said city and thus discriminates in favor of Montgomery and against Troy and other points, this respondent avers that it has never cut rates from the regular tariff, and has not paid any rebates on cotton as charged.

Eighth. This respondent denies that export rates are made as stated in the eighth paragraph of the complaint; but, on the contrary, avers that the basis for export rates from Troy is 7 cents per 100 pounds higher than from Montgomery, this being the difference between the rates from Troy and Montgomery on shipments to coast points.

Ninth. This respondent denies that the rates by roads having lines to Troy from Northwestern and Eastern points unjustly discriminates against Troy and in favor of Montgomery, Columbus, and other points, but on the contrary aver that said rates are just and reasonable within themselves and relatively. There are few points that can reship after buying goods from first hands and sell them again at a combination not greater than a through rate to ultimate points of distance. Such points are confined to those in which competition has arisen to a very high degree, such as Montgomery, Ala., Eufaula, Ala., and Columbus, Ga., all of these points having not only competition between several rail lines but also competition by water.

If every point is to be construed in competition with that and other points and with the roads of several hundred miles, and it is thought

necessary to place them on a parallel with the lowest rate as the standard, then the railroads of this section of the country will be brought to a deplorable condition.

Tenth. This respondent denies that Troy is unjustly discriminated against, but on the contrary avers that the rates to and from that point are on a better basis as compared with her competitors.

Respondent denies that the Troy rates are unreasonable and unjust in themselves, as a comparison of the financial condition of the railroads in Alabama will show.

Respondent also denies that Troy has been unusually or unjustly discriminated against, but on the contrary avers that an investigation will show material progress in her commerce.

Eleventh. This respondent avers that the annual competition of water and rail lines will of itself properly regulate the rates at Troy as at other competitive points, and prays that the present adjustment of rates may be allowed to continue in force.

Thirteenth. And this respondent shows that on the 4th day of March, 1892, by order of the United States court for the eastern division of the southern district of Georgia, E. P. Alexander was appointed temporary receiver of the Central Railroad and Banking Company of Georgia in the equity suit of Mrs. Rowena N. Clarke et al. against the said company and others. On the 28th day of March, 1892, the said E. P. Alexander and others were appointed receivers of the same property and H. M. Comer, one of the appointees, was elected chairman of board of receivers. On the 15th day of July, 1892, the said receivers so appointed were discharged under order of the same court in the equity cause of the Central Railroad and Banking Company of Georgia against the Farmers Loan and Trust Company et al., and H. M. Comer was appointed sole receiver of the Central Railroad and Banking Company of Georgia. And the said H. M. Comer, receiver, respectfully submits that being as he is an officer of the United States court and subject only to its order, he is not subject to the jurisdiction of this honorable Commission in the premises.

Wherefore respondent prays that the complaint against respondent be dismissed.

All of which is respectfully submitted.

LAWTON & CUNNINGHAM,
*General Counsel for the Central Railroad and Banking
Company of Georgia, and H. M. Comer, Receiver.*

STATE OF GEORGIA, *County of Chatham:*

William F. Shellman, being duly sworn, says that he is the traffic manager of the Central Railroad and Banking Company of Georgia, and for H. M. Comer, receiver, and that the foregoing answer is true.

W. F. SHELLMAN,
Traffic Manager.

Subscribed to and sworn to before me this 6th day of August, 1892.

[SEAL.]

T. M. CUNNINGHAM, Jr.,
Notary Public, Chatham County, Ga.

EXHIBIT V.

Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA., }
 v. }
 ALABAMA MIDLAND RAILROAD ET AL. }

The Mobile and Ohio Railroad Company, one of the defendants in the above-entitled cause, for answer to the complaint in this proceedings, respectfully states:

First. For answer to the first paragraph of said complaint the defendant says it has no knowledge, other than such as is obtained from the allegations of said paragraph itself, whether complainant is or is not an association of citizens and business men of the city of Troy, Ala., organized for the purpose, among others, of fostering the commercial, industrial, financial, and other interests of said city, and it can not therefore either admit or deny the said allegation, and ask' that proof thereof may be made by complainant if deemed necessary to defendant's interests.

Second. For answer to the second paragraph of said complaint, defendant admits that it is a common carrier, engaged in interstate commerce, and as such carrier subject to the act to regulate commerce, and that its line of railroad extends from Mobile, Ala., to East St. Louis, Ill., and that it issues through bills of lading for the transportation of property and through tickets for the transportation of passengers between points on its line and the cities of Montgomery and Troy, Ala.

Third. For answer to the third paragraph of the said complaint, defendant admits that the Alabama Midland Railway Company and the Central Railroad Company of Georgia are the only ones of said defendant carriers that directly reach said city of Troy, and are the initial roads in all lines leading from Troy.

Fourth. For answer to the fourth paragraph of the said complaint, defendant admits that the city of Troy is located at the intersection of the Alabama Midland Railway and the Central Railroad of Georgia, and that the city of Montgomery, Ala., is at the western terminus of the Alabama Midland Railway, 52 miles from said city of Troy; but it has no knowledge, other than such as is obtained from the allegations of the paragraph itself, as to any competition in trade between the said cities of Troy and Montgomery, or that the Alabama Midland Railway and the defendant

roads connecting with it from the east charge and collect a higher rate on shipments to Troy, the shorter distance, than on shipments through Troy to Montgomery, the latter being the longer distance, under substantially similar circumstances and conditions over the same lines and in the same directions, the shorter distance being included in the longer; or as to what are the rates from the cities of Baltimore and New York to Troy and Montgomery, and can therefore neither admit nor deny the said allegation, and ask' that proof of the same may be made by complainants if necessary. Defendant says further, in answer to the said paragraph, that it does not handle any business between Troy and said cities of Baltimore and New York or other Eastern points, and forms no part of any line or lines of railroad that does or do handle such business.

Fifth. For answer to the fifth paragraph of the said complaint, defendant says that it has no knowledge as to any discrimination by the Alabama Midland Railway and the Central Railroad of Georgia in favor of Montgomery and against Troy in rates of freight on phosphate rock from South Carolina and Florida in violation of the long and short haul clause of the act to regulate commerce, and can therefore neither admit nor deny said allegations.

Sixth. For answer to the sixth paragraph of the complaint, defendant says it has no knowledge, information, or belief as to the truth of the allegations contained in said paragraph as to the receipts of cotton at Troy in 1892, or the amount of business done in that city, or as to any discrimination in freight rates made against said city in favor of Montgomery on cotton or other produce by the Alabama Midland Railway or the Central Railroad of Georgia between said cities and the points named in said paragraph, and can not, therefore, either admit or deny said allegations, but defendant denies that it is now or has been at any time a party to any such discrimination.

Seventh. For answer to the seventh paragraph of said complaint, defendant says that it has no knowledge of the wrongs complained of in said paragraph; but it denies that it is now or has been at any time a party to such wrongs.

Eighth. For answer to the eighth paragraph of the complaint, defendant says that it has no knowledge of the truth of any of the allegations contained in said paragraph as to the unlawful discrimination in freight rates, or the charging of lower rates than regular published tariff rates, complained of in said paragraph; but it denies that it is now or has been at any time a party to any such acts.

Ninth. For answer to the ninth paragraph of the complaint, defendant denies that by its rates of freight it unjustly discriminates in favor of Montgomery, Columbus, or other Southern points named in said paragraph, and against the city of Troy, and alleges that in so far as concerns Albany, Ga., and the other points mentioned in the tables annexed to the complaint, defendant's direct route is not through Troy, and that in consequence the long and short haul clause of the interstate-commerce act does not apply.

60 Tenth. For answer to the tenth paragraph of said complaint, defendant denies that it has charged and collected, as claimed in the complaint, a greater compensation for the transportation of a like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer distance; or that it has unjustly discriminated against Troy in favor of her competitors, in the matter of freight rates, and denies that its rates of freight to Troy are excessive, unreasonable, and unjust in themselves.

Eleventh. For answer to the eleventh paragraph of said complaint defendant says that it has no knowledge whether the business of Troy has been injured, and if so to what extent, by unjust discriminations and excessive freight rates, but defendant denies that it has discriminated against said city of Troy in freight rates, or that it has charged said city excessively.

Wherefore the defendant prays that the complaint in this proceeding be dismissed as to defendant.

THE MOBILE AND OHIO RAILROAD COMPANY,
By R. V. TAYLOR, *General Auditor*.

Attest :
[SEAL.]

HY. TACON, *Secretary*.

STATE OF ALABAMA, *Mobile County* :

R. V. Taylor, being duly sworn, says that he is the general auditor of the Mobile and Ohio Railroad Company, defendant in this proceeding, and that the foregoing answer is true, as he verily believes.

R. V. TAYLOR,
General Auditor.

Subscribed and sworn to before me this 12th day of August, 1892.

SAFFORD BERNEY,
Notary Public, Mobile County, Ala.

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EXHIBIT W.

Interstate Commerce Commission.

BOARD OF TRADE OF TROY, ALA.,

v.

ALABAMA MIDLAND RAILWAY COMPANY AND OTHERS. }

Answer of the Concord and Montreal Railroad.

1. The Concord and Montreal Railroad, in common with other lines and systems north of what are known as the southern gateways, such, for example, as Hagerstown, Md., and Alexandria, Va., quote arbitraries covering the various classes of freight, which arbitraries are used regardless of the point in the territory south of such gateways where the freight originates. It follows that the discrimination, if any, complained of by the complainant in this case must arise on the railroad or railroads forming that part of the line which lies south of said gateways, and can not be imputed to and is not participated in by said Concord and Montreal Railroad and, as it believes, by any other railroad or railroads forming part of the line north of said gateways.

2. In case where a water carrier forms part of the line of transportation, for example, the Savannah Steamship Line or the Metropolitan Steamship Line, arbitraries are quoted from Boston without regard to the point where the traffic originates, so that, as far as the Concord and Montreal Railroad is concerned, the discrimination complained of, if any, must originate with the railroad or railroads constituting the line southerly of Boston, and can not be imputed to and is not participated in by the Concord and Montreal Railroad.

3. The Concord and Montreal Railroad denies that there is any other matter or thing alleged or stated in said complaint which it is necessary, material, or proper for this defendant to make answer unto, and prays that as against this defendant said complaint may be dismissed.

THE CONCORD AND MONTREAL RAILROAD,
By B. A. KIMBALL, *Chairman Executive Committee*.

CONCORD, August 22, 1892.

STATE OF NEW HAMPSHIRE, *Merrimack*, ss:

Then appeared Daniels C. Prescott, general freight agent of said Concord and Montreal Railroad, and made oath that the statements in the foregoing answer contained are true to the best of his knowledge, information, and belief.

Before me,

[SEAL.]

H. M. CAVIS,
Notary Public.

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EXHIBIT X.

Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALA.,
v.
THE PROVIDENCE AND STONINGTON STEAMSHIP
Company, impleaded with The Alabama Midland
Railway Company et al. }

The respondent, The Providence and Stonington Steamship Company, for answer to the petition of the Board of Trade of Troy, Ala., herein, says:

That said respondent has no knowledge of the truth of the allegations in said petition contained, and therefore denies the same.

This respondent further answering, says: That it has no intention to violate the act to regulate commerce, as alleged in said petition, and in particular has no intention to discriminate against the city of Troy, in Pike County, as therein alleged, or in any other particular; but that on the contrary this respondent has always been, and is now, desirous of conforming in all respects to the requirements of law in all matters to which said petition relates.

Wherefore your respondent prays that the petition of the complainant may be dismissed, and that this respondent have such other and further relief as in the premises may be just.

MILLER, PECKHAM & DIXON,
Attorneys for Respondent Above Named.

STATE OF NEW YORK, *County of New York*, ss:

Wilbur F. Herbert, being duly sworn, says that he is agent for and treasurer of the Providence and Stonington Steamship Company, the respondent above named, and that the matters set forth in the foregoing answer are true as he verily believes.

WILBUR F. HERBERT.

Subscribed and sworn to before me this 30th day of August, 1892.

[SEAL.]

JOHN P. MCCABE,
Commissioner of Deeds, New York City.

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EXHIBIT Y.

CHESHIRE RAILROAD COMPANY,
Keene, N. H., July 11, 1892.

EDWARD A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: In reply to your' of 2d instant, inclosing a petition and statement of charges made by the Board of Trade of Troy, Ala.:

The Cheshire Railroad was consolidated with the Fitchburg Railroad September 30, 1890, and since that time the Cheshire Railroad has been owned and operated by the Fitchburg Railroad Company. Under these circumstances it does not seem to us that the Cheshire Railroad Company can be a party in this case.

Will you please advise me if we need to make any further reply?

Yours, truly,

F. H. KINGSBURY, *Treasurer.*

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EXHIBIT Z.

NEW YORK AND NEW ENGLAND RAILROAD COMPANY,
Boston, Mass., July 21, 1892.

To the Honorable INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

GENTLEMEN: In the matter of the complaint of the Board of Trade of Troy, Ala., against the Alabama Midland Railway Company and others, the answer by the New York and New England Railroad Company, for itself and the Providence and Springfield Railroad Company, may also be taken as the answer of the Norwich and New York Transportation Company, a majority of the stock of which is controlled by the New York and New England Railroad Company, and the tariffs applying by the lines of which company are issued by the New York and New England Railroad Company.

Yours, truly,

C. S. MELLEN,
General Manager.

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EXHIBIT AA.

BEFORE THE

Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALABAMA,

v.

THE ALABAMA MIDLAND R. CO., THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA AND H. M. COMER AND OTHERS, THE RECEIVERS THEREOF; THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY; THE KANSAS CITY, FORT SCOTT & GULF RAILROAD COMPANY; THE KANSAS CITY, MEMPHIS & BIRMINGHAM RAILROAD COMPANY; THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THE MOBILE & OHIO RAILROAD COMPANY; THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY; THE WESTERN RAILWAY OF ALABAMA; THE MISSOURI PACIFIC RAILWAY COMPANY; THE WABASH RAILROAD COMPANY; THE SIOUX CITY & PACIFIC RAILROAD COMPANY; THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE EVANSVILLE & TERRE HAUTE RAILROAD COMPANY; THE JEFFERSONVILLE, MADISON & INDIANAPOLIS RAILROAD COMPANY; THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY; THE CLYDE STEAMSHIP COMPANY; THE OCEAN STEAMSHIP COMPANY OF SAVANNAH; THE PROVIDENCE & STONINGTON STEAMSHIP COMPANY; THE NEW YORK & TEXAS STEAMSHIP COMPANY; THE METROPOLITAN STEAMSHIP COMPANY; THE CITIZENS' STEAMBOAT COMPANY; THE HARTFORD AND NEW YORK TRANSPORTATION COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE NEW HAVEN STEAMBOAT COMPANY; THE PEOPLE'S LINE STEAMERS; THE MAINE STEAMSHIP COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE CENTRAL VERMONT RAILROAD COMPANY; THE BRIDGEPORT STEAMBOAT COMPANY; THE NORWICH & NEW YORK TRANSPORTATION COMPANY; THE CANADIAN PACIFIC RAILWAY COMPANY; THE MINNEAPOLIS, ST. PAUL & SAULT STE MARIE RAILWAY COMPANY; THE HOUSATONIC RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE BOSTON & ALBANY RAILROAD COMPANY; THE BOSTON & MAINE RAILROAD COMPANY; THE NEW YORK & NEW ENGLAND RAILROAD COMPANY; THE OLD COLONY RAILROAD COMPANY; THE FITCHBURG RAILROAD COMPANY; THE MAINE CENTRAL RAILROAD COMPANY; THE CONNECTICUT RIVER RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE PROVIDENCE & SPRINGFIELD RAILROAD COMPANY; THE CHESHIRE RAILROAD COMPANY; THE CONCORD & MONTREAL RAILROAD COMPANY.

1. The fact, that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver, does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the Act to Regulate Commerce.
2. The continuity of the carriage of freight over a line formed by two or more roads, is not broken *in fact* and cannot be broken in law by the charge of a local rate by one (or more) of such roads as its proportion of the through rate.
3. The successive receipt and forwarding in

ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for such carriage within the meaning of the Act to Regulate Commerce without previous express agreement between them, and the obligations imposed by the statute cannot be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local and not a through carrier. (Re-affirming the doctrine laid down in *Georgia R. Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120.)

4. A local rate, which presumably is adopted as covering both the initial and final expense of a local haul, is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers.
5. Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate,

the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions.

6. The facts, that one city is much larger and has more important and extensive business interests than another and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. The object of the Act to Regulate Commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises and favored individuals.
7. Unjust discrimination as between localities or individuals cannot in the nature of things be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points.

Complaint filed June 29, 1892.—Answers filed July 15 to August 31, 1892.—Heard at Troy, Ala., Nov. 11, 1892.—Briefs filed March 7 to May 1, 1893.—Decided August 15, 1893.

GREATER charge for shorter distances. Unjust discrimination and undue preference against localities.

Mr. W. C. Oates, for complainant.

Mr. A. A. Wiley, for the Alabama Midland Railway Company and the Savannah, Florida & Western Railway Company.

Mr. E. L. Russell, for the Mobile & Ohio Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

Clements, Commissioner:

The complainant, the "Board of Trade of Troy," is an association of citizens of Troy, Alabama, organized for the promotion of the business interests of that city. The defendants (hereinafter named) form several through lines between the points mentioned in the complaint, and, as members of such lines, are engaged in interstate commerce, wholly by rail or partly by rail and partly by water. The Alabama Midland Railway Company and the Central Railroad & Banking Company of Georgia reach Troy directly and are the initial carriers in all the lines from that point. These two roads for brevity are hereafter designated, respectively, as the Alabama Midland and the Georgia Central.

The general ground of complaint is, in substance, that, Troy, being in active competition for business with Montgomery and Columbus, the lines of defendants to Troy and those cities unjustly discriminate in their rates against the former and give the latter an undue preference or advantage in respect to certain commodities and classes of traffic. The specific charges, in-

sisted on at the hearing and to which the testimony relates, are:

1. That the Alabama Midland and the defendant roads connecting and forming lines with it from Baltimore, New York and the east to Troy and Montgomery charge and collect a higher rate on shipments of class goods from those cities to Troy than on such shipments through Troy to Montgomery, the latter being the longer distance point by 52 miles.
2. That the "Alabama Midland and the Georgia Central and their connections unjustly discriminate against Troy and in favor of Montgomery" in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields and only \$3.00 per ton on such shipments to Montgomery, the longer distance point by both said roads, and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland has to be hauled through Troy.
3. That the rates on cotton established by said two roads and their connections on ship-

ments to the Atlantic seaports, Brunswick, Savannah and Charleston, unjustly discriminate against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy is 47 cts. and that from Montgomery, the longer distance point, is only 40 cts., and that such shipments from Montgomery over the road of the Alabama Midland have to pass through Troy.

4. That on shipments for *export* from Montgomery and other points within what is termed in the complaint "the jurisdiction" of the Southern Railway & Steamship Association, to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a lower rate is charged than the regular published tariff rate to such seaports, in that Montgomery and such other points are allowed by the rules of said Association to ship through to Liverpool *via* any of those seaports at the lowest through rate *via* any one of them on the day of shipment, which may be much less than the sum of the regular published rail rate and the ocean rate *via* the port of shipment; that this reduction is taken from the published tariff rail rate to the port of shipment; and that, this privilege being denied to Troy, is an unjust discrimination against Troy in favor of Montgomery and such other favored cities and that it is, also, a discrimination against shipments which terminate at such seaport in favor of shipments for *export*.

5. That Troy is unjustly discriminated against in being charged on shipments of cotton *via* Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and the Georgia Central.

6. That the rates on "class" goods from western and northwestern points established by the defendants forming lines from those points to Troy are relatively unjust and discriminatory as against Troy when compared with the rates over such lines to Montgomery and Columbus.

Answers to the complaint have been filed in behalf of the Alabama Midland; the Georgia Central; the Louisville & Nashville Railroad Company; the Savannah, Florida & Western Railway Company; the Western Railway of Alabama; the Louisville, New Albany & Chicago Railway Company; the Illinois Central Railroad Company; the Mobile & Ohio Railroad Company; the Kansas City, Memphis & Birmingham Railroad Company; the Kansas City, Fort Scott & Memphis Railroad Company; the Pennsylvania Railroad Company; the Philadelphia & Reading Railroad Company; the New York & New England Railroad Company; the Providence & Springfield Railroad Company; the Central Railroad Company of New Jersey; the Maine Central Railroad Company; the Boston & Maine Railroad Company; the Metropolitan Steamship Company;

the Connecticut River Railroad Company; the Providence & Stonington Steamship Company; the Fitchburg Railroad Company; the Concord & Montreal Railroad Company; and the Canadian Pacific Railway Company.

A few of the respondents deny all participation in traffic or through rates from or to Troy; some allege that their proportion of any through rates from or to Troy is their local charge over their own roads or a fixed amount, which remains the same no matter what may be the point of origin or destination of the traffic, and hence that they cannot be guilty of discrimination as against Troy or any other locality; and others contend, that although they receive a proportion of through rates on through shipments over their roads between the points named in the complaint, yet they are not "under a common control, management or arrangement for continuous carriage" with the other members of the through lines. These matters of defense may be disposed of before entering upon the discussion of the other and more material issues raised by the pleadings. Those of the defendants, who, it may appear, do not participate in the traffic or rates in question, are not amenable to, and cannot be affected by, any order which the Commission may make in this case. The fact, that a carrier's proportion of a through rate is its local for the haul over its own road or is a fixed amount, which remains the same for all points of origin or destination of traffic reached by the through line, cannot relieve it from joint responsibility as a component of the through line, if the entire rate be violative of the law. In the case of the *Georgia R. Co. v. Clyde SS. Co.*, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324, it is said, "The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is matter for the carriers to determine among themselves;" and again, "where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act to Regulate Commerce by declaring that as to such traffic it is a local carrier." See also *James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. Ry. Co.*, 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744. Goods cease to be a part of the general mass of property in a state when they have been shipped or entered with a common

carrier for transportation to another state. *Coe v. Errol*, 116 U. S. 517, 29 L. ed. 715; *Kidd v. Pearson*, 128 U. S. 1, 32 L. ed. 346. From that time until they reach their destination and "become incorporated and mixed up with the mass of property" in the state where delivered, they are subjects of interstate commerce, *Leisy v. Hardin*, 135 U. S. 110, 34 L. ed. 132, and the rates charged for their carriage are within the regulating power of this Commission under the Interstate Commerce Law. By sec. 7 of that law, it is made unlawful for carriers subject to that Act "to enter into any combination, contract, or agreement, express or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination," and that "no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intention to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act." The continuity of the haul is not broken in fact and cannot be broken in law by one or more carriers, members of a through line, charging local rates as their proportion of a through rate. If the continuity of the carriage may not be thus interrupted, can the exaction of local rates exempt the carrier from liability under the law by placing him in the attitude of a strictly local carrier, operating under no "common control, management or arrangement" with the other carriers participating in the through haul? If this be conceded, the most vital provisions of the law may be readily evaded and nullified. For instance, a terminal carrier, part of a continuous through line, could elect to charge on through traffic its local to one or any number of stations on its road and a less through rate to stations beyond, and no violation of law could be alleged because as to the short haul the carrier would not be subject to the Act. The charge of a local rate and declaration by a carrier that as to through transportation to certain points on its road it is a local carrier, *cannot alter the fact*. The law regards the substance of things, and a palpable device for evasion of the law will not be allowed to accomplish its purpose. The facts, that the carriage is continuous, that the traffic is through interstate traffic and that the carrier in due and ordinary course of business accepts and forwards it, are sufficient to establish responsibility under the law. As is said in the case of the *Georgia R. Com. v. Clyde SS. Co.*, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324: "The receipt

successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and *previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.*"

The answer of the Georgia Central sets forth, among other things, that it is in the hands of a receiver, H. M. Comer, appointed "by order of the United States Court for the Eastern Division of the Southern District of Georgia," and that the receiver, "being an officer of the United States court, and subject only to its order, is not subject to the jurisdiction of this Commission in the premises." The main purpose of a receivership is, to preserve property in controversy *pendente lite*, and this devolves upon the court appointing the receiver the duty of protecting the possession of the property in his hands. It is a general rule, therefore, that before suit is brought against a receiver, leave of the court by which he was appointed must be obtained. "This rule is necessary to prevent one creditor from obtaining undue advantage over others in the enforcement of his claim; otherwise courts outside the jurisdiction of the court which appointed the receiver might proceed to judgment and sell the property within their reach under execution, and the appointing court would be powerless to prevent the injustice." Beach, *Receivers*, §§ 652, 655; *Barton v. Barbour*, 104 U. S. 126, 26 L. ed. 672. Complaints before this Commission do not fall within the reason of the rule requiring consent of the court appointing a receiver to be obtained before bringing suit. The main object of such complaints is the regulation or readjustment of rates alleged to be illegal because unjustly discriminative or unreasonable in themselves, and reparation for injury sustained by reason of such illegality; and the order of the Commission for reparation or other relief, if not voluntarily obeyed by the carriers, can only be enforced by suit in the proper court. The Commission renders no judgment upon which execution can issue and be levied on property in the hands of a receiver. The question whether property in the possession of a receiver can be made subject to an order of reparation issued by us would arise on proceedings in the courts for the enforcement of such order. *Loud v. South Carolina R. Co.* 4 Inters. Com. Rep. 205, 5 I. C. C. Rep. 529. No order of reparation is asked in the present case. It appears, moreover, that by Act of Congress of March 3, 1887 (U. S. Stat. 1886-87, p. 552) receivers appointed by United States Courts may be sued "without the previous leave of the court in which such receiver was appointed."

The answers of the defendants who admit participation in and responsibility for the rates

complained of, deny that those rates are unlawful or violative of any of the provisions of the Act to Regulate Commerce, the main ground upon which they are sought to be justified being that the circumstances and conditions attending transportation to Troy are not substantially similar to those attending transportation to Montgomery and Columbus because of water and rail competition at the latter points.

Facts and Conclusions.

Troy is situated at the intersection of the roads of the Alabama Midland and the Georgia Central companies. Montgomery is at the terminus of the Alabama Midland, fifty-two miles north west from Troy, and shipments to Montgomery over that road from New York, Baltimore and northeastern cities, and from the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, and from Port Royal, So. Ca. and Gainesville, Ocala and Tampa, Florida, pass through Troy.

The Savannah, Florida & Western Railway and the Ocean Steamship Company, and the Savannah, Florida & Western Railway and Merchants & Miners Transportation Company, form with the Alabama Midland Railway two through lines, the former from New York and the latter from Baltimore, over which traffic is carried on through rates and through bills of lading to Troy and through Troy to Montgomery. The Georgia Central forms through lines in connection with the Ocean Steamship Company and Merchants & Miners Transportation Company to Troy and Montgomery from New York and Baltimore. The class rates in cents per hundred pounds, except Class F, which is per bbl., over the above lines (sea and rail) from New York and Baltimore to Troy and Montgomery, respectively, are, as follows:

SEA & RAIL.

From New York.			From Baltimore.	
Class	To Montgomery	To Troy	To Montgomery	To Troy
1	114	136	106	129
2	98	117	90	111
3	86	103	83	98
4	73	89	70	84
5	60	74	57	70
6	49	61	46	58
A.	36	--	33	--
B.	48	--	45	--
C.	40	--	37	--
D.	39	--	36	--
E.	58	--	55	--
H.	68	--	65	--
F. (per bbl.)	78	--	72	--

There are also published "all rail" rates *via* the "Great Southern Despatch" line, from New York and Baltimore to Troy and Montgomery. On this line traffic is carried from New York to Harrisburg over the Pennsylvania road, from Harrisburg to Hagerstown over the Cumberland Valley road, from Hagerstown to

Bristol over the Norfolk & Western, and from Bristol to Chattanooga over the East Tennessee, Virginia & Georgia road. From Chattanooga the principal routes or lines to Troy and Montgomery appear to be, (1) to Atlanta over the East Tennessee, Virginia & Georgia road, from Atlanta to Montgomery over the Western Railway of Alabama, and from Montgomery to Troy over either the Alabama Midland or the Georgia Central; (2) to Birmingham over the Alabama Great Southern road, from Birmingham to Montgomery over the Louisville & Nashville road, and from Montgomery to Troy over the two roads named in route 1 above; (3) to Calera over the East Tennessee, Virginia & Georgia road, from Calera to Montgomery over the Louisville & Nashville road, and from Montgomery to Troy over the two roads named in route 1 above; and (4) over the line of the Georgia Central *via* Macon and Columbus to Troy and Montgomery.

The class rates in cents per hundred pounds (except Class F, which is per bbl.) over the above described "all rail" lines to Troy and Montgomery from New York and Baltimore, are as follows:

ALL RAIL.

From New York.			From Baltimore.	
Class.	To Montgomery	To Troy.	To Montgomery	To Troy.
1	114	144	106	136
2	98	123	90	115
3	86	108	83	105
4	73	93	70	90
5	60	77	57	74
6	49	63	46	60
A.	36	—	33	—
B.	48	—	45	—
C.	40	—	37	—
D.	39	—	36	—
E.	58	—	55	—
H.	68	—	65	—
F. (per bbl.)	78	—	72	—

It appears that shipments of phosphate rock are made *via* the Alabama Midland, as the terminal road, to Troy and through Troy to Montgomery from Charleston and Port Royal, South Carolina, and from Gainesville and other points in Florida. The roads which connect, and constitute through lines, with the Alabama Midland, from those cities to Troy and Montgomery, are the following: from Charleston, the Savannah, Florida & Western and the Charleston & Savannah Railway; from Port Royal, the above two roads, and the Port Royal & Augusta (Cent. R. R. of Ga.); from Gainesville, the Savannah, Florida & Western Railway. The Georgia Central has a line from Troy and from Montgomery to Port Royal; it also forms lines in connection with the Charleston & Savannah Railway, or the Georgia Railroad and South Carolina Railroad, from those

points to Charleston, and with the Savannah, Florida & Western Railway, to Gainesville.

The rates in cents per ton on phosphate rock from Port Royal, Charleston and Gainesville, to Troy and Montgomery, respectively, are, as follows:

From	Port Royal	Charleston	Gainesville
To			
Troy	322	322	322
Montgomery	300	300	300

The following roads constitute through routes or lines in connection with Alabama Midland to the Atlantic sea-ports, Brunswick, Savannah, Charleston, West Point and Norfolk; to wit, to Brunswick, the Savannah, Florida & Western and the Brunswick and Western railways; to Savannah, the Savannah, Florida and Western Railway; to Charleston, the Savannah, Florida & Western and the Charleston & Savannah railways; to West Point, Va., the Western Railway of Alabama, the Atlanta & West Point Railroad and the Richmond & Danville Railroad; or (another route) the Savannah, Florida & Western Railway, the Charleston & Savannah Railway, the Northeastern Railroad of South Carolina, the Wilmington, Columbia & Augusta Railroad, the Wilmington & Weldon Railroad, the Petersburg Railroad, the Richmond & Petersburg Railroad and the Richmond & Danville Railroad; to Norfolk, the Savannah, Florida & Western Railway, the Charleston & Savannah Railway, the Northeastern Railroad of South Carolina, the Wilmington & Weldon Railroad, and the Seaboard & Roanoke Railroad.

In connection with the Georgia Central the roads forming through lines from Troy and Montgomery to these seaports are, as follows: to Brunswick, the East Tennessee, Virginia & Georgia Railway; (to Savannah, the Georgia Central has a line from Troy & Montgomery to Savannah); to Charleston, the Charleston & Savannah Railroad, or (another route) the Georgia Railroad and the South Carolina Railroad; to West Point (Va.) the Richmond & Danville Railroad, or (another route) the roads composing the Atlantic Coast Line and the Richmond & Danville; to Norfolk, the roads composing the Atlantic Coast Line, or (another route) the roads composing the Seaboard Air Line.

The rates in cents per hundred pounds on cotton from Troy and Montgomery respectively, to these ports are:

To	Brunswick	Savannah	Charleston	West Point	Norfolk
From					
Troy	47	47	52		
Montgomery	45	45	45	51	51

When the complaint was filed the cotton rate from Montgomery to Brunswick, Savannah and Charleston was 40 cts. per hundred pounds. It has since, as appears above, been raised to 45 cts. and the rate from Troy to Charleston has been raised to 52 cts.

The most available routes or lines between Troy and Louisville, Cincinnati and St. Louis, respectively, appear to be: (1), from Troy to Montgomery over the Alabama Midland or Georgia Central and from Montgomery over the Louisville and Nashville to Louisville, Cincinnati and St. Louis; (2), from Troy to Montgomery over the Alabama Midland or Georgia Central, from Montgomery to Atlanta over the Western Railway of Alabama and Atlanta & West Point Railroad, from Atlanta to Chattanooga over the Western & Atlantic or East Tennessee, Virginia & Georgia Railroad, and from Chattanooga to Cincinnati over the Cincinnati, New Orleans & Texas Pacific Railway; (3), from Troy to Montgomery over the Alabama Midland or Georgia Central, from Montgomery to Selma over the Western Railway of Alabama, from Selma to Lauderdale (Miss.) over the East Tennessee, Virginia & Georgia road, and from Lauderdale to St. Louis over the Mobile & Ohio road; (4), from Troy *via* Columbus to Chattanooga over the line of the Georgia Central, and from Chattanooga to Cincinnati over the Cincinnati, New Orleans & Texas Pacific road; (5), from Troy *via* Columbus to Chattanooga over the Georgia Central, from Chattanooga to Burgin, Ky., over the Cincinnati, New Orleans & Texas Pacific road and from Burgin to Louisville over the Louisville Southern Railroad; (6), from Troy *via* Columbus to Chattanooga over the line of the Georgia Central, and thence over the Nashville, Chattanooga & St. Louis and the Missouri Pacific railways to St. Louis. The first three of these routes are *via* Montgomery and the last three *via* Columbus.

None of the traffic involved in this case is carried by the Georgia Central either through Troy to Montgomery or through Montgomery to Troy. Its Mobile & Girard line runs in a southwesterly direction from Columbus to and through Troy towards Mobile (intersecting at Troy, as before stated, the Alabama Midland) and its Montgomery & Eufaula line runs in a direction a little north of west from Eufaula to Montgomery. These two lines (the Mobile & Girard and the Montgomery & Eufaula) cross each other at Union Springs, Ala., thirty one miles from Troy and forty from Montgomery and traffic from or to Troy over the lines of the Georgia Central is carried *via* Union Springs. Traffic for Montgomery coming *via* Columbus or Eufaula over these lines does not pass through Troy, and no departure, therefore, from the "long and short haul rule" of the 4th section of the Statute, as against

Troy as the shorter distance point and in favor of Montgomery as the longer distance point, appears to be chargeable to the Georgia Central. Shipments consigned to Troy *via* Columbus or Montgomery, the latter cities being as to such shipments the shorter distance points, can raise no question of a departure from the rule as against Troy.

But as to the Alabama Midland and its connections constituting through lines, the case is different. Interstate traffic is carried over that road to Troy and through Troy on to Montgomery, and in the opposite direction, from Troy, and from Montgomery through Troy, the haul to and from Montgomery being 52 miles greater; and in respect to this traffic the proof shows departures from the rule of the Statute, (1) as to class goods shipped from New York, Baltimore and the east; (2) as to phosphate rock, shipped from Port Royal and Charlestown, South Carolina, and Gainesville and other points of origin of such shipments in Florida; and (3) as to cotton shipped from Troy and from Montgomery to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk. As will be seen from the tables given above, the "sea and rail" rates on class goods from Baltimore to Troy range from 12 cts. per hundred pounds on *Class 6* to 23 cts. on *Class 1* higher than those on such goods shipped through Troy to Montgomery, and from New York to Troy, from 12 cts. to 22 cts., and the "all rail" rates from Baltimore and New York to Troy, from 14 cts. to 30 cts. These class rates are applied to sugar and coffee, which are the heavy goods mostly shipped to Troy from the east, and also to dry goods, notions, and many other commodities. The rate on phosphate rock from Port Royal, Charleston, and Gainesville to Troy is 22 cts. per ton higher than that on such rock shipped through Troy to Montgomery, and on cotton the rate from Troy to the seaports, Brunswick and Savannah, is 2 cts. per hundred pounds and to Charleston 7 cts. per hundred higher than that from Montgomery *via* Troy.

Where substantial dissimilarity of circumstances and conditions is set up by defendant carriers in justification of departures from the "long and short haul" rule of the statute, the burden is upon them to establish such dissimilarity. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31; *Spartanburg Board of Trade v. Richmond & D. R. Co.* 2 Inters. Com. Rep. 193, 2 I. C. C. Rep. 304. Water competition at Montgomery *via* the Alabama river, is adduced as a justification in the answer of the Alabama Midland and by some of the other defendants. In the case of *Re Louisville & N. R. Co.*, *supra*, it was held that "actual" water competition "of controlling force in respect to

traffic important in amount" may constitute the dissimilar circumstances and conditions authorizing a departure from the general rule of the statute. In the case of *Harwell v. Columbus & W. R. Co.*, 1 Inters. Com. Rep. 681, 1 I. C. C. Rep. 236, the complaint alleged unjust discrimination against Opelika and in favor of Montgomery and Columbus. Water competition at Montgomery *via* the Alabama river was (as in the present case) set up by way of justification. This defense was not sustained and the Commission in overruling it said, "the mere fact that a point is situated upon a navigable stream does not of itself justify the lesser charge for the longer haul to such point," and that, in order to justify such lesser charge, the water competition must "*control the carriage of the traffic on which the discrimination is made.*" In that case it is further said, "The Commission is aware that an independent and active line of steamers connects Montgomery with the Atlantic seaboard at Mobile," but that the fact "without more," that the "railroads have water competition and are compelled to meet it," is not held to be "sufficient to justify the lesser charge for the longer distance." Conceding that there is a line of boats running between Montgomery and Mobile (of which fact, however, there is no proof, in this case) that alone would not be sufficient to justify the greater charge to Troy than to Montgomery. At the conclusion of the taking of the testimony, it was agreed between counsel, that "each side should, within two weeks from the date of the taking of the testimony, file an affidavit with the Commission setting forth the *volume of business of Troy and Montgomery, respectively, and also the number of inhabitants of each.*" In the affidavit filed by counsel for the defendants is a statement that "*the business on the Alabama river, according to the report of the United States Engineer, for the year, 1891, was 52,349 bales of cotton carried by boat and 44,500 tons of other freight.*" This statement is outside the agreement, but aside from that fact, it purports to give the entire cotton and other business on the river for the year named without stating the point or points at which it originated, or the direction in which it was moved. How much of it went from Montgomery or points above or below Montgomery *down* the river towards Mobile, or from Mobile and points above that city *up* the river to Montgomery does not appear. As showing water competition of controlling force at Montgomery on traffic to that city from New York, Baltimore and other northeastern cities, or from the South Carolina and Florida phosphate beds, or from Montgomery to the Atlantic sea-ports, Brunswick, Charleston and Savannah, the statement is valueless. (This is true, also, as to the traffic from St. Louis and

from Louisville, Cincinnati and other Ohio river points, hereinafter to be considered.) There are regular lines of ocean steamers from those ports to New York, Baltimore and other cities on the northeast coast, but there does not appear to be such line from Mobile, either to those cities or to any foreign port. The only witness questioned by counsel for the defendants as to the effect of water competition at Montgomery on shipments of cotton to the Atlantic ports testified that "the river competition plays no great part." An attempt was made to show that some shipments of phosphate rock had been made from the Florida points, Ocala and Tampa (the latter on the Gulf coast) *via* Mobile and the Alabama river to Montgomery, but the witness testified that he had never known such shipments to be made, that he himself had "tried to get a rate by that line to Montgomery and had been unable to get it," and that he thought it impracticable as "the goods would have to be transferred at Mobile to get to Montgomery and then would have to be hauled to the works." No attempt is made to establish substantial dissimilarity of circumstances and conditions at Montgomery on the ground of rail competition further than by proof of the fact that there are a number of railway lines running to and through that city connecting with different parts of the country. This alone, it is scarcely necessary to say, is not sufficient. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31.

Our conclusion is that no justification has been shown for the departures, complained of and established by the proof, from the general rule of the 4th section of the Act to Regulate Commerce.

The evidence also sustains the allegation of the complaint, that on shipments for export to the Atlantic ports, Brunswick, Savannah, West Point and Norfolk, from Montgomery and other localities within what is termed in the complaint "the jurisdiction" of the Southern Railway & Steamship Association, Montgomery and such other points are allowed, under the rules of that Association, to ship through to Liverpool *via* any one of those ports at the lowest through rate *via* any of them at the date of shipment—in other words, at the lowest combination of inland and ocean rates from the interior point to the foreign market. This may result in a less through rate than the sum of the regular published tariff rail rate to the port of transshipment and the ocean rate thence. For example, if at the date of shipment the regular rail rate to Savannah be 40 cts. and the ocean rate from that port to Liverpool 53 cts., making a through rate of 93 cts., and the rail rate to Norfolk be 45 cts., and the ocean rate from that port to Liverpool 35 cts., making a through rate of 80

cts., Montgomery is allowed on a shipment *via* Savannah the latter rate of 80 cts., or 13 cents less than the sum of the regular inland rate to that port and the ocean rate on. This 13 cts. is taken from the published inland rail rate to Savannah and not from the ocean rate. This privilege is denied to Troy, and the result is that on two shipments to Savannah for export made the same day, the one from Montgomery (the longer distance point both over the Alabama Midland and the Georgia Central) and the other from Troy, the rate charged the Troy shipper is 45 cts. and that charged the Montgomery shipper is only 32 cts. This discrimination would also exist between a shipment from any interior point consigned to the domestic port and one for export consigned to a foreign market.

The question, whether the making of export rates through the port of New York of which the inland proportion accepted by the carriers was less (often 10 cts. or more per hundred pounds) than the published tariff rates charged on like traffic at the same time from interior points to the same port as its final destination, was unlawful as being an unjust discrimination against the latter, was presented to the Commission in the case of *New York Produce Exch. v. New York Cent. & H. R. R. Co.*, 2 Inters. Com. Rep. 553, 3 I. C. C. Rep. 138. The Commission decided that the difference made by the carriers between the proportion of the through rate from interior points to New York on export traffic consigned to foreign countries and the rate charged contemporaneously on the like kind of traffic from the same interior points consigned to New York, "was not shown to be justified by any circumstances tending to show that it was just and proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port." It was further held that under the amendment of March 2, 1889, to the Act to Regulate Commerce, requiring ten days' previous notice of advances and three days' previous notice of reduction in rates, they cannot be varied from day to day, or oftener, to meet fluctuations in ocean rates and that the only practicable mode yet devised for making through export rates, is to add to the established inland rates from the interior to the seaboard the current ocean rates. On the 23d of March, 1889, the Commission issued a general order in reference to publication under the amendment of March 2, 1889, of advances and reductions in joint rates and fares, in which, among other things, it was stated, that tariffs, whether joint or individual, for merchandise billed or intended for export by sea were subject to the requirement of notice of any change therein, the same as in the case of other tariffs. After the pub-

lication of this order, a hearing was had before the Commission at the request of a large number of interstate carriers south of the Potomac and Ohio rivers, as to the application of this order to export traffic through our Atlantic and Gulf ports from the Chesapeake Bay to those in Texas. At this hearing it was insisted, in substance, that, the vessel service at the Trunk Line ports being ample, no material difficulty was found in the transportation of exports to them at established tariff rates, but that, on account of the scarcity of sea-going vessels at these southern ports and the consequent absence of competition, vessels at the latter were able to a larger extent to exact terms to suit themselves and this resulted in great fluctuations in ocean rates affecting the stability of the inland proportions of the through rates. These and other matters were presented as justifying the exemption in respect to export rates of these carriers from the order as to publication of notice of advances and reductions and from the general rule requiring the inland proportion of a through export rate to be not less than the rate on domestic traffic to the same point. It is said in our Third Annual Report, that "in consequence of these conditions, a method came into use, and has since prevailed over a large number of the southern states, of an export rate made every day to be in force as to the export rates for the succeeding twenty-four hours, based on the vessel facilities in the southern ports and their ocean rates, and on the lowest combination of the inland and ocean rates from the interior point of shipment to the foreign market, the through rate thus made having no reference to the established inland rate for consignment at the seaboard." In view of the matters set forth and proven by the southern carriers and of the fact that the Commission had intimated in reference to the export rate *via* the port of Boston (*Re Export Trade of Boston*, 1 Inters. Com. Rep. 25, 1 I. C. C. Rep. 24) that there might be substantially different circumstances and conditions affecting export traffic in different parts of the country, the Commission, while not expressly sanctioning this method of making export rates through the southern ports, forbore to condemn it, and held the question presented for further investigation and consideration. In the same report the Commission also stated that it expressed no opinion on the subject, but deemed it proper to lay before Congress the substance of the evidence taken at the hearing granted the southern carriers. Third Annual Rep. pp. 64-69.

The main cause of complaint on the part of Troy, however, in connection with this system of making export rates, as disclosed by the evidence, is, that while its benefits are given by the roads composing the Southern

Railway & Steamship Association to Montgomery and other favored localities on their lines, they are denied to Troy, and it is contended that this is an unjust discrimination against Troy. This contention is apart from and independent of the question, whether the system is itself lawful and justified as applied to Montgomery and other points. If it be lawful in itself, it cannot lawfully be so applied as to unduly favor one locality, to the prejudice of another. Both the Alabama Midland and the Georgia Central are members of the Southern Railway & Steamship Association, and Troy as well as Montgomery is located on those roads. The haul from Montgomery over the Georgia Central to the Atlantic ports named is about ten miles longer than from Troy over that road, and the haul from Montgomery to those ports over the Alabama Midland is fifty-two miles longer than from Troy, and is also through Troy. The charge of the lesser rate from Montgomery than from Troy over the Georgia Central would seem to be a discrimination against Troy and over the Alabama Midland, also, a departure from the "long and short haul rule" of the statute. The principal article of export shipped from Troy and Montgomery over these roads to the Atlantic is cotton. The cotton business of Troy is large, amounting in 1892 to 38,500 bales, aggregating in value \$1,500,000, nearly a third of its total business of all kinds. No excuse is offered, and we are unable to conjecture any valid reason, why Troy is excluded from the benefit of the export system of rate making applied to Montgomery. The fluctuations in ocean rates at the southern ports and other matters set up by the southern carriers as rendering necessary or justifying this system, would seem to apply to shipments from Troy as well as from Montgomery.

It appears, as alleged in the complaint, that on shipments of cotton from Troy *via* Montgomery to New Orleans, the shipper is charged the full local rate to Montgomery both by the Alabama Midland and the Georgia Central. The local from Troy to Montgomery is 23 cts. per hundred pounds and the rate from Montgomery on is 45 cts., making a total through rate from Troy to New Orleans of 68 cts. The testimony is that under this rate Troy is debarred from shipping cotton *via* New Orleans for Europe and is left only the outlet *via* Savannah and other Atlantic ports, and that this is a disadvantage to Troy inasmuch as cotton shipped *via* New Orleans is classed "New Orleans cotton," which is valued at from $\frac{1}{4}$ to $\frac{1}{2}$ of a cent per pound higher than other cotton.

The haul from Troy to Montgomery may be made either over the Alabama Midland or *via* Union Springs over the lines of the Georgia Central and from Montgomery to New Or-

leans it is made over the Louisville & Nashville road.

In the case of *Harrell v. Columbus & W. R. Co.*, 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 236, cited in his brief by counsel for complainant, it was charged that through rates and through bills of lading were unjustly denied to Opelika on shipments of cotton *via* Montgomery to New Orleans, and the Commission held that such through rates and bills, being important facilities in the transportation of cotton and being given on other commodities and to other points similarly situated, should be given Opelika and that the refusal of the same in the absence of a valid excuse for such refusal was an unjust discrimination against Opelika. In the present case, however, it is neither alleged nor proven that through rates and billing are denied Troy on shipments of cotton *via* Montgomery to New Orleans, but that on the haul from Troy to Montgomery over either the Alabama Midland or the Georgia Central, the local rate between those points is charged and collected as a part of the through rate to New Orleans. The charge is in legal effect that the aggregate through rate thus arrived at is unjustly discriminatory against Troy. "While," as was said in the case of the *Railroad Com. of Florida v. Savannah, F. & W. R. Co.*, 3 Inters. Com. Rep. 688, 5 I. C. C. Rep. 13, "the complainant has no interest in the division the defendants may make between themselves of a through rate and that division does not determine what the charge to the public should be, yet 'it is not without significance in determining what are reasonable rates for the whole distance on the lines in question.'" See *Brady v. Pennsylvania R. Co.*, 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 181. The distance from Troy to Montgomery over the Alabama Midland (the short line) is 52 miles and from Montgomery to New Orleans over the Louisville & Nashville road, 320 miles. The rate of 23 cts. per hundred pounds from Troy to Montgomery is 4.42 mills per mile; the rate of 45 cts. from Montgomery to New Orleans is 1.40 mills per mile; the rate of 47 cts. from Troy to Savannah (359 miles) is 1.30 mills per mile; and the rate of 45 cts. from Montgomery to Savannah (411 miles) is 1.09 mills per mile. There is, also, a through rate on cotton from Columbus, Ga., to New Orleans of 50 cts. per hundred pounds. The distance from Columbus to New Orleans over the Georgia Central *via* Union Springs to Montgomery and thence over the Louisville & Nashville road is 414 miles, and this rate of 50 cts is 1.20 mills per mile. It thus appears that the rate of 23 cts. from Troy to Montgomery is, on a mileage basis, four times as large as that from Montgomery to Savannah and more than three times

as large as the rates from Montgomery and from Columbus to New Orleans, and from Troy to Savannah. The aggregate through rate from Troy to New Orleans of 68 cts. yields 1.80 mills per mile.

Through rates, it is true, are not required to be made on a strictly mileage basis, but mileage is as a general rule an element of importance and "due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges." *McMorran v. Grand Trunk R. Co. of Canada*, 2 Inters. Com. Rep. 604, 3 I. C. C. Rep. 252. The cost of the services in railway transportation is the expense of the two terminals and the intermediate haul. The terminal expenses remain the same without reference to the length of the haul. A local rate covers the expenses of both terminals, but a division of a through rate allotted to either of the terminal carriers of the through line can only embrace the expense of one terminal, and because of this difference in expense among other reasons, local rates are made as a general rule much higher in proportion to the length of haul than through rates or any division thereof. A local rate, which presumably is adopted as covering both the initial and final expenses of the haul, is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers. The rate of 23 cts. from Troy to Montgomery is admitted to be the local between those points, which is charged on a haul originating at the former and ending at the latter and hence covers the expense to the carrier (either the Alabama Midland or the Georgia Central) at both terminals.

The evidence does not show what the expense at Troy is, but the relatively disproportionate charge for the haul and expense from Troy to Montgomery as shown above cast the burden on the carrier of justifying it, and hence of showing what the expense is. It is a matter lying peculiarly within the knowledge of the carrier. In the case of *McMorran v. Grand Trunk R. Co. of Canada*, *supra*, it is said: "The evidence does not show with any precision what these several expenses [terminal among others] are. . . . The defendants assume in their brief that the burden of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers a difficult and onerous rule of evidence. It would be impossible for the petitioners to show such facts otherwise than by the defendants' agents, and it was clearly the province of the defendants to make them appear. No presumption arises that a rate is reasonable from the mere

fact that it has been put in effect; and when it is *prima facie* disproportionate or relatively unequal, the *onus* is on the carrier to justify its charges when challenged on these grounds. The knowledge of the justifying circumstances and conditions relied on is peculiarly in possession of the carrier."

On the hauls from Montgomery to New Orleans, from Montgomery to Savannah, from Troy to Savannah and from Columbus to New Orleans, there are the expenses of both terminals as well as the haul from Troy to New Orleans. It cannot be assumed that on a haul from Troy to New Orleans the initial expenses at Troy are greater than at Montgomery on haul from that point to New Orleans or to Savannah, or at Columbus on haul from that point to New Orleans, or at Troy itself on a haul in the opposite direction to Savannah. No reason has been shown, and we can conceive of none, why a higher proportionate rate should be charged on cotton from Troy to New Orleans than from Montgomery, or from these other points on the several hauls mentioned. The disproportion, as we have seen, is attributable to the charge, as a part of the through rate to New Orleans, of the local from Troy to Montgomery, and the truth appears to be that this exaction of the local rate is an incident and in pursuance of what is termed the "trade center," or "basing," or "distributing point" system, which the Commission has more than once condemned as unjust discrimination and in violation of law, and which we will be called on to refer to more at length in connection with the class rates from Louisville, Cincinnati and St. Louis to Montgomery, Columbus and Troy, hereafter to be considered.

A rate from Troy to New Orleans based on the present mileage rate from Montgomery to that city would amount to 52.21 cts. As a general rule, however, while the aggregate through rate steadily increases as the distance increases, the rate per ton or hundred weight per mile decreases. Under this rule, the distance from Troy being 52 miles greater than from Montgomery, the rate per hundred pounds per mile from Troy, in the absence of exceptional conditions, should be slightly less than that from Montgomery. In view of this rule, and of the rate of 50 cts. from Columbus, a longer distance point by 42 miles than Troy, our conclusion is that the through rate on cotton from Troy *via* Montgomery to New Orleans should not exceed 50 cts. per hundred pounds.

The class rates in cents per hundred pounds (except Class F, which is per bbl.) to Troy, Montgomery and Columbus from Louisville, Cincinnati and St. Louis, are given in the following table:

Classes.	1	2	3	4	5	6	A	B	C	D	E	F
From												
Louisville, Ky.												
To Troy, Ala.	140	130	113	95	75	62	45	50	37	32	69	66
Montgomery, Ala.	98	92	78	63	52	41	28	31	24	20	48	33
Columbus, Ga.	107	92	81	68	56	46	28	36	29	25	50	55
From												
Cincinnati, O.												
To Troy, Ala.	150	140	123	103	82	68	49	52	39	34	73	63
Montgomery, Ala.	108	102	88	71	59	47	32	33	26	22	52	37
Columbus, Ga.	117	102	91	76	63	52	32	38	31	27	54	59
From												
St. Louis, Mo.												
To Troy, Ala.	168	153	133	109	87	72	52	56	44	37	77	69
Montgomery, Ala.	126	115	98	77	64	51	35	39	31	25	56	43
Columbus, Ga.	135	115	101	82	68	56	35	44	36	30	58	65

The local class rates in cents per hundred pounds (except Class F, which is per bbl.) from Montgomery and Columbus, respectively, to Troy, are as follows:

Classes.	1	2	3	4	5	6	A	B	C	D	E	F
From												
Montgomery to Troy.	49	46	40	33	27	21	19	21	16	15	27	33
From												
Columbus to Troy.	58	55	48	39	31	24	22	24	19	17	31	39

It was testified at the hearing by Mr. Bashinsky, a witness for the complainant, that on goods shipped on through bills of lading from Louisville and the west to Troy, the Troy merchant is charged the full local rate from Montgomery to Troy, and the counsel for the Alabama Midland states in his brief, that "the through rate from Troy to any western market is made up by adding the local rate from Troy to Montgomery to the through rate from Montgomery to the west." From a comparison of the above local rates with the difference between the rates from Louisville and the other cities named to Montgomery and Troy, respectively, it will be found that this is true only as to rates on goods of Class 6. The difference between the Class 6 rate to Montgomery and that to Troy from all these points is 21 cts., which is the local rate on that class from Montgomery to Troy. On the other classes the local rate from Montgomery to Troy exceeds the proportion of the through rate between those points as follows:

Classes.	1	2	3	4	5	6	A	B	C	D	E	F
Excess of local rate over through.	7	8	5	13	13	—	2	2	3	3	6	6

The distance from Louisville to Montgomery over the Louisville & Nashville road is 490 miles and from Montgomery to Troy over the Alabama Midland, 52 miles. The following table shows the mileage rate on the different classes in mills per hundred pounds yielded by the through rate from Louisville to Montgomery and by the additional charge on through shipments from Louisville to Troy for the haul from Montgomery to Troy:

Classes.	1	2	3	4	5	6	A	B	C	D	E	F	
Louisville to Montgomery.	21.8	1.6	1.3	1.06	.83	.57	.63	.49	.40	.38	.67	.40	
Montgomery to Troy.	8	7.1	6.7	5.9	3.8	4	2.6	3.6	2.5	2.3	4	5	2.5

The testimony is that the Troy merchant gets the most of his heavy goods from the west. The class 6 (on which the through rate from Louisville, St. Louis & Cincinnati to Troy is made by the addition of the local from Montgomery to Troy) embraces sugar, coffee, flour, buckwheat, animal food, cement, axle and car grease, green hides, iron architecture, agricultural implements, nails, spikes, and many other heavy as well as light articles in constant demand, too numerous to be set forth here. Classes 4 and B on which the difference between the local rate and proportion of through rate from Montgomery to Troy as shown above is only 1 and 2 cents, are applied, the former, among numerous other articles, to machinery of all kinds, agricultural implements, earthenware, mouldings, engines, castings, axes, cotton seed oil mills, dry hides, window glass, ale, beer, porter, canned beef and pork, canned fruit and potatoes; and the latter, among many other articles, to salted beef, pork and bacon. It seems probable, that the statement above referred to, made by the witness and counsel, that the through rate from Louisville and the west *via* Montgomery to Troy is made up of the rate to Montgomery plus the local on to Troy, is substantially true as to the goods constituting the bulk of the traffic from those points to Troy. When the mileage rate from Louisville (which point is taken as an illustration) to Montgomery, is compared with that from Montgomery on to Troy, it seems clear that the rate to Troy on all the classes is made from Montgomery as a "basing point." This comparison, it will appear from the table given above, shows that the proportion of the rate from Montgomery to Troy is from four to seven times as large per mile as that from Louisville to Montgomery.

The following table shows the sum of the rates on class goods from Louisville to Mont-

gomery and Troy, respectively, plus the rates from those points on re-shipment to Brundidge, Ozark, and Dothan:

FROM LOUISVILLE, KY.
(In cents per 100 lbs. except Class F, which is per bbl.)

Classes.	1	2	3	4	5	6	A	B	C	D	E	F
To Brundidge, Ala. Re-shipped from Montgomery, Ala.	146	136	117	98	81	65	52	52	38	33	72	68
To Brundidge, Ala. Re-shipped from Troy, Ala.	168	158	135	115	93	76	59	62	46	40	82	84
To Ozark, Ala. Re-shipped from Montgomery.	156	144	122	103	84	67	54	54	40	35	74	72
To Ozark, Ala. Re-shipped from Troy, Ala.	176	161	143	122	95	80	59	66	49	43	87	90
To Dothan, Ala. Re-shipped from Montgomery.	162	147	125	106	88	71	57	57	40	35	78	72
To Dothan, Ala. Re-shipped from Troy, Ala.	188	174	152	130	104	86	69	71	51	45	93	94

Brundidge, Ozark and Dothan are towns and stations on the Alabama Midland Railway, all east of Troy and shipments to them over that road from Montgomery pass through Troy. Brundidge is 17 miles from Troy and 69 from Montgomery; Ozark, 40 miles from Troy and 92 from Montgomery; and Dothan, 68 miles from Troy and 120 from Montgomery.

The sum of the rates from Louisville to Columbus and Troy, respectively, plus the rates on re-shipments from those cities to Brantley, in cents per 100 lbs., except Class F, which is per bbl., are as follows:

FROM LOUISVILLE.		
Classes.	To Brantley, Ala., re-shipped from Columbus.	To Brantley, Ala., re-shipped from Troy.
1	1.73	1.76
2	1.53	1.64
3	1.32	1.43
4	1.10	1.19
5	.90	.95
6	.73	.78
A	.52	.60
B	.63	.66
C	.50	.59
D	.44	.44
E	.84	.89
F (per bbl.)	.92	.92

Brantley is on the Georgia Central road 26 miles south of Troy and 111 miles from Columbus, and goods shipped from Columbus to Brantley over that road pass through Troy. A like disparity in rates on re-shipments prevails

as to points west of Troy on the Alabama Midland and north of Troy on the Georgia Central, the distances of which from Troy are much less than from either Montgomery or Columbus; and the situation in this respect is the same, when the shipments originate at Cincinnati, and other Ohio river points, and at St. Louis, as when they come from Louisville.

The fact that the sum of the rates from points of origin to points of destination, as shown in the above tables, on re-shipments from Montgomery, Columbus and Troy, are greater in cases of such re-shipments from Troy than from Montgomery and Columbus, is attributed by the complainant to alleged relatively unjust through rates to Troy as compared with those to Montgomery and Columbus. There is no allegation and no proof that the rates to Montgomery and Columbus are unreasonable in themselves. The through rate to Troy is, therefore, the object of attack.

The differences in rates as against Troy, it will be noted, are much smaller on re-shipments from Columbus than on re-shipments from Montgomery, and the local rates from Columbus to Troy are much greater than the difference between the through rates to Columbus and those to Troy. It is not shown that there are through rates from Louisville, St. Louis and Ohio river points *via* Columbus to Troy based on the Columbus rate, and the natural course of the traffic from those points to Troy appears to be *via* Montgomery. As before stated, the through rates to Troy are based on the Montgomery rates and in making them Montgomery is treated as a "trade center" or "basing" point and Troy as a local. This is conceded on the part of the defendants. The vice in the through rate to Troy, if any, arises from this fact and from the consequently greatly disproportionate charge for the haul from Montgomery to Troy, when compared with that from Louisville and the west to Montgomery.

The "trade center" or "basing point" system has been in many cases pronounced unlawful by this Commission. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 289, 290, 1 I. C. C. Rep. 84, 85; *Martin v. Chicago, B. & Q. R. Co.* 2 Inters. Com. Rep. 38-40, 2 I. C. C. Rep. 44-47; *Harvell v. Columbus & W. R. Co.* 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 236. In the Louisville & Nashville case, it is said in this connection, that the Act to Regulate Commerce "aims at equality of right and privilege, not less between towns than between individuals, and will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them;" and in the Martin case, the statute is declared to be one "enacted in the interest of equality as between large and small interests," under which "there can be no unjust discrimination in giving to

large and small towns relatively equal rates."

It is further said in the latter case, that "a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact, that it is in conflict with the spirit and purpose of the Act to Regulate Commerce—one of the reasons for the passage of which was, that by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers." In a recent decision by the Supreme Court of the United States in a case brought up from the U. S. Circuit Court, for the District of Colorado (*Union Pac. R. Co. v. Goodridge*, 149 U. S. 680, 37 L. ed. 896) *Mr. Justice Brown*, in speaking of the purpose of the Colorado act under consideration as being the same as to intrastate commerce as that of the Act to Regulate Commerce as to interstate commerce, says very forcibly, that it was designed "to cut up by the roots the entire system of rebates and discriminations in favor of particular localities, special enterprises, or favored corporations," and pertinently refers to the fact, that carriers being dependent upon the will of the people for their corporate existence, are "bound to deal fairly with the public, to extend them reasonable facilities for the transportation of their persons and property, and to put all their patrons upon an absolute equality." Citing *Seo-field v. Lake Shore & M. S. R. Co.* 43 Ohio St. 571; *Sandford v. Catewaissa, W. & E. R. Co.* 24 Pa. 378; *Messenger v. Pennsylvania R. Co.* 36 N. J. L. 407; *McDuffee v. Portland & R. R. Co.* 52 N. H. 430. The fact, therefore, insisted upon by counsel for the roads as a matter of defense, that Montgomery is a much larger city with more extensive business interests than Troy, and is and has been treated by the roads in making rates to Troy and other surrounding towns as a "trade center" or "basing point," is no justification for discriminations in those rates in favor of Montgomery.

Water and rail competition at Montgomery are also set up as justifying the disproportion in the rates in question as between Troy and Montgomery. Here, as we have shown in connection with the violations of the long and short haul rule of the statute, these defenses are not sustained by the proof. Water competition *via* the Alabama river, in order to control rates from St. Louis and Louisville, Cincinnati and other Ohio river points, on traffic from those cities stopping at Montgomery, must, it is obvious, grow out of transportation of such traffic *via* Mobile up the river to Montgomery. The carriage of goods by river from or *via* Montgomery to Mobile would be limited in its effect to rates to the latter city. Water transportation may be possible from localities on the Ohio and Mississippi rivers *via* those

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rivers to the Gulf at New Orleans, on the Gulf to the Alabama river at Mobile and up that river to Montgomery, and the Mobile & Ohio Railroad carries freight from St. Louis to Mobile, which might be transported thence up the Alabama river to Montgomery. No competition by either of these routes is shown in this case on traffic from St. Louis or Ohio river points to Montgomery, and it does not seem probable that such competition of controlling force is likely to arise. That it does not now exist would appear to be indicated by the lower rates from St. Louis, Cincinnati and Louisville to Mobile than to Montgomery at present prevailing as shown in the following table:

furnished by proof of cost of service or other matters proper to be considered in determining what rates are just and reasonable from the standpoint both of the carrier and shipper. If there is an expense incident to the continuation of the through haul to Troy, which calls for and justifies exceptional rates, the burden, as we have seen, is upon the carrier to show it. The roads, however, do not claim that there is anything in the nature of the service of transportation to Troy which justifies the disproportionate rates charged to that city, but base their defense of those rates on another and distinct ground (which we hold not to be established) namely, dissimilarity of circumstances

Distances.	Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
644 miles <i>via</i> M. & O.	From St. Louis to Mobile	90	75	65	50	40	35	25	25	25	20	28	25	45
805 miles <i>via</i> L. & N.														
625 miles <i>via</i> L. & N.	From St. Louis to Montgomery.....	126	115	98	77	64	51	35	39	31	25	56	43	54
669 miles <i>via</i> L. & N.	From Louisville to Mobile	90	75	65	50	40	35	25	25	25	20	28	25	45
490 miles <i>via</i> L. & N.	From Louisville to Montgomery.....	98	92	78	63	52	41	28	31	24	20	48	33	40
779 miles <i>via</i> L. & N.	From Cincinnati to Mobile	98	83	73	54	44	39	28	27	27	22	31	28	49
600 miles <i>via</i> L. & N.	From Cincinnati to Montgomery.....	108	102	88	71	59	47	32	33	26	22	52	37	44

Note.—The above rates are in cents per 100 lbs., except Class F, which is per bbl.

Although over the lines of the Louisville & Nashville Company the distances from all three of the above cities to Mobile is 180 miles greater than to Montgomery, and the haul to Mobile is through Montgomery, the rates to the latter are materially higher than to the former. The higher rates to Montgomery than to Mobile shown in the above table seem inconsistent with the claim that the rates to Montgomery are controlled by water competition *via* Mobile up the Alabama river to Montgomery.

What we have said in reference to the through rate on shipments of cotton from Troy to New Orleans, as to the charge of a local as part of a through rate and as to the burden of proof where rates are shown to be disproportionate and preferential, is applicable in connection with the rates now under investigation.

Our conclusion on this branch of the case, is, that the through class rates from Louisville, St. Louis, Cincinnati and the west to Troy are relatively unjust to that city, when compared with those to Montgomery, and that this injustice arises from the practice of basing the Troy rates on the rates to Montgomery as a "trade center."

The question remains to be determined, what the rates to Troy shall be. In arriving at a conclusion on this point, no light is

and conditions resulting from water and rail competition at Montgomery. In the absence of proof of exceptional conditions, the transportation from Montgomery to Troy, including terminal expenses, will be presumed to be not more costly to the carrier than for like distances in the same or like territory. On examination we find, that the class rates from Louisville, Cincinnati and St. Louis and Ohio river points generally, are the same to Columbus, Eufaula and Opelika. The distances from Louisville and St. Louis to Columbus by the shortest available route (that *via* Birmingham and Opelika over the Columbus & Western road) are nine miles greater and by the routes *via* Montgomery are about 42 miles greater than to Troy. The distance from Cincinnati to Columbus by the shortest route appears to be about 14 miles less than to Troy. The distances to Eufaula are greater than to Troy, and to Opelika, they are somewhat less. The distances from the cities named to Columbus and Eufaula being on the average greater than to Troy and other things being equal, the rate to Troy should, if anything, be slightly less than to those cities. No substantial dissimilarity of circumstances and conditions justifying a higher rate to Troy, has been attempted to be shown. The class rates in cents per hundred pounds (except Class F,

which is per bbl.) to Columbus, Eufaula and Opelika, and to Troy, from Louisville, and the excess of the Troy rates over those to Columbus, Eufaula and Opelika are given in the following table:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
From Louisville to Columbus, Eufaula & Opelika.	107	92	81	68	56	46	28	36	29	25	50	55	50
From Louisville to Troy	149	130	113	95	75½	62	45	50	37	32	69	59	66
Excess of Troy rates	3.	38	32	27	19½	16	17	14	8	7	19	4	16

The excess of the Troy rate is the same under the rates from Cincinnati and St. Louis.

The above rates to Columbus, Eufaula and Opelika, if applied to Troy, yield the following rates in cents per ton per mile on the different clauses:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate per ton per mile.....	3.94	3.39	2.99	2.50	2.06	1.69	1.03	1.32	1.07	.92	1.84	2.03	.92

These mileage rates average on all the classes 1.97 cents, and are somewhat greater than are realized on the application of the same through rates to the hauls to Columbus and Eufaula. The above average of 1.97 cents and the above mileage rates on 8 out of the 13 classes are greater than the average receipts per ton per mile and estimated cost of carrying a ton a mile for the years ending June 30, 1891 and 1892, as reported by the Louisville & Nashville R. Co., the Alabama Midland and Georgia Central, and which are given in the following table:

Name of Road.	1891.		1892.	
	Average receipts.	Estimated cost.	Average receipts.	Estimated cost.
Louisville & Nashville R. Co.	cts. .968	cts. .614	cts. .948	cts. .621
Alabama Midland Ry.	1.745	.990	1.356	1.400
Central R.R. of Georgia.	1.529	1.012	•	•

*Report for four months by the receiver of the Richmond & Danville Railroad does not give these items.

Columbus and Eufaula are located in or are contiguous to the territory in which Troy is situated, and the former, at least, is in active competition with Troy for business in the country immediately around Troy. We are of the opinion that the class rates to Troy from Louisville, Cincinnati and St. Louis should be as least as low as those above given to Columbus and Eufaula.

It is claimed on the part of the roads, that the establishment of lower rates to Troy will disarrange and call for a re-adjustment of the rates to the localities around Troy in order to prevent unjust discrimination in favor of Troy and against such localities. It appears from the tariffs on file with the Commission, that the through rates to these points around Troy are made on the basis of the rates to Montgomery plus the local rates from Montgomery on—in other words, that Montgomery is given the undue advantage of a "trade center" as against these points. This being the case, these rates now call for re-adjustment with a view of remedying the unjust discrimination thus appearing. The adjustment of the rates to these points so as to make them conform to the reduced rates which we have ordered for Troy,

will tend to bring them in line with the law and do away with the unjust discrimination in favor of Montgomery already existing under them. It certainly cannot be held to be a valid objection to the correction of unlawful rates to one locality, that it involves a like correction as to other localities. Unjust discrimination as between localities or individuals cannot be essential to the business prosperity of the roads; on the contrary, we believe that in the end, if not immediately, their financial welfare would be promoted by the application in the matter of rate making of the principle of absolute fairness as between all interests, large and small, enjoined by the statute. Rates should in the first instance be fixed upon a fairly remunerative basis and then so applied as to result in no undue advantage or disadvantage to any interest. It will devolve upon the roads to make whatever changes in rates to surrounding towns may be incidental to, and a necessary consequence of, compliance in good faith with our order in reference to the rates to Troy.

In pursuance of the conclusions arrived at in this case, it is ordered, that the roads participating in the traffic involved cease and desist, (1), from charging and collecting on class goods shipped from Louisville, St. Louis and Cincinnati to Troy a higher rate than is now charged and collected on such shipments to Columbus and Eufaula; (2), from charging and collecting

on cotton shipped from Troy *via* Montgomery to New Orleans a higher through rate than 50 cts. per hundred pounds; (3), from charging and collecting on shipments of cotton from Troy for export *via* the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a higher rate to those ports than is charged and collected on such shipments from Montgomery; (4), from charging and collecting on cotton shipped from Troy to Brunswick, Savannah and Charleston, a higher rate than

is charged and collected on such shipments from Montgomery through Troy to those ports; (5), from charging and collecting on class goods, shipped from New York, Baltimore and the northeast, to Troy, a higher rate than is charged and collected on such shipments to Montgomery; and (6), from charging and collecting on phosphate rock shipped from the South Carolina and Florida fields to Troy a higher rate than is charged and collected on such shipments through Troy to Montgomery.

EXHIBIT AB.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 15th day of August, A. D. 1893.
Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, Commissioners.

THE BOARD OF TRADE OF TROY, ALA.,

v.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD and Banking Company of Georgia, and H. M. Comer and others, the receivers thereof; the Savannah, Florida and Western Railway Company; The Kansas City, Fort Scott and Gulf Railroad Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Wabash Railroad Company; The Sioux City and Pacific Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The Peoples' Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company; The Concord and Montreal Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and investigation of the matters and things involved herein having been had, and the Commission having thereupon, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, said report and opinion is hereby referred to and made a part of

this order; and the Commission having, as more fully and at large appears by said report and opinion, found and decided, among other things, that the defendant common carriers which participate in the transportation of class goods to Troy, Ala., from Louisville, Ky., St. Louis, Mo., and Cincinnati, Ohio, and from New York, N. Y., Baltimore, Md., and other Northeastern points, and the defendant common carriers which participate in the transportation of phosphate rock from South Carolina and Florida fields to Troy aforesaid, and the defendant common carriers which participate in the transportation of cotton from Troy aforesaid to the ports of New Orleans, Brunswick, Savannah, Charleston, West Point, or Norfolk, as local shipments or for export through said ports, have made greater charges under substantially similar circumstances and conditions for the shorter distance to or from Troy aforesaid than for longer distances over the same lines in the same direction, and have unjustly discriminated in rates against Troy aforesaid, and subjected said place and dealers and shippers therein to undue and unreasonable prejudice and disadvantage in favor of Montgomery and Eufaula, Ala., and Columbus, Ga., and other places and localities and dealers and shippers therein, all of which is in violation of the provisions of the act to regulate commerce as amended;

It is ordered and adjudged that the defendants, The Alabama Midland Railway Company; The Central Railroad and Banking Company of Georgia, and H. M. Comer and others, the receivers thereof; The Savannah, Florida and Western Railway Company; The Kansas City, Fort Scott and Gulf Railway Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company; The Western Railway of Alabama;

69 The Missouri Pacific Railway Company; The Wabash Railroad Company; The Sioux City and Pacific Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad

Company; The Philadelphia and Reading Railroad Company; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company, and The Concord and Montreal Railroad Company, engaging in the transportation of phosphate rock or class goods to or the transportation of cotton from Troy, in the State of Alabama, do, on or before the 10th day of September, 1893, cease and desist and from and after said date wholly abstain from charging, demanding, collecting, or receiving, any greater compensation in the aggregate for services rendered in such transportation than is specified, as follows, to wit:

1. On class goods shipped from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio, to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Ga., and Eufaula, Ala.

2. On shipments of cotton from Troy aforesaid through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per hundred pounds.

3. On shipments of cotton from Troy aforesaid for export through the Atlantic seaports, to wit, Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid.

4. On shipments of cotton from Troy aforesaid to the ports of Brunswick, Savannah, or Charleston no higher rate of charge than is charged and collected on such shipments from Montgomery aforesaid through Troy to said ports.

5. On shipments of class goods from New York, Baltimore, or other northeastern points to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

6. On shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

And it is further ordered that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, twenty-seven in number, and marked A to AB, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 29th day of December, 1893.

[SEAL.]

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

71 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
v.	
THE ALABAMA MIDLAND RAILWAY COMPANY et al.	

Motion of petitioner.

And now comes the Interstate Commerce Commission, petitioner in the above-entitled cause, by Henry D. Clayton, United States district attorney for the middle district of Alabama, and moves and respectfully prays the court for an order as to the manner of service of petition in said cause, of this motion and of the order thereon, and for the court to require each of said defendants respectively to file their answers to said petition on or before a day certain to be fixed by the court, and also to appear before the court here at such time as may be fixed by the court, then and there to show cause why such other preliminary orders as to the court may seem meet shall not be entered to speed the cause to a final hearing, as provided for in the 16th section of the act to regulate commerce.

(Indorsed :) Filed this 20th day of January, A. D. 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 92.

72 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
v.	
THE ALABAMA MIDLAND RAILWAY COMPANY et al.	

Order of court on petitioner's motion.

And now, upon the filing of the petition and accompanying motion herein, it is hereby ordered that the secretary of the Interstate Commerce Commission be, and is hereby, authorized to make service of said petition and accompanying motion and this order by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of said Interstate Commerce Commission, correctly addressed to the said defendants who are natural persons, or to the president, or one of the vice-presidents, or the secretary of each of the corporate defendants.

It is also hereby ordered that each of the said defendants respectively file their answers to said petition on or before the 16th day of February, A. D. 1894, and also appear before the court here on the 19th day of February, A. D. 1894, and show cause why such other and further preliminary orders as to the court may seem meet should not be entered in this cause to speed the same to final hearing.

Done in term time this 20th day of January, A. D. 1894.

JOHN BRUCE, *Judge.*

(Indorsed :) Filed this 20th day of January, A. D. 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 93.

74 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
vs.		
THE ALABAMA MIDLAND RAILWAY COMPANY et al.		

Certificate of service.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that service of the petition in this case, the motion of petitioner filed herein on the 20th day of January, 1894, and the order of the court thereon, duly authenticated under the seal of the said Interstate Commerce Commission, as appears by copies of said petition, motion, and order annexed hereto, has been made by me pursuant to the terms of said order, to wit:

By registering and depositing in the mails of the United States at Washington, D. C., on the 22nd day of January, 1894, true copies thereof, duly authenticated as aforesaid, and correctly addressed to the

75 defendants in this case, who are natural persons, or to the president, one of the vice-presidents, or the secretary of each of the corporate defendants in this cause, that is to say, to H. M. Comer, receiver of the Central Railroad & Banking Company of Georgia, Savannah, Ga.; Messrs. Samuel Spencer, Charles M. McGhee, and Henry Fink, receivers of the East Tennessee, Virginia & Georgia Railway Company, Knoxville, Tennessee; S. M. Felton, receiver of the Cincinnati, New Orleans & Texas Pacific Railway Company, Cincinnati, Ohio; Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers, Philadelphia & Reading Railroad Company, Philadelphia, Pa.; George H. Nettleton, president and general manager of the Kansas City, Fort Scott & Memphis Railroad Company, Kansas City, Mo.; George H. Nettleton, president and general manager of the Kansas City, Memphis & Birmingham Railroad Company, Kansas City, Mo.; Milton H. Smith, of the Louisville & Nashville Railroad Company, Louisville, Ky.; James C. Clarke, president and general manager of the Mobile & Ohio Railroad Company, Mobile, Ala.; G. H. Phinizy, president, Western Railway of Alabama, Augusta, Ga.; George J. Gould, president of the Missouri Pacific Railway Company, New York, N. Y.; Stuyvesant Fish, president of the Illinois Central Railroad Company, Chicago, Ill.; D. J. Mackey, president of the Evansville &

76 Terre Haute Railroad Company, Evansville, Ind.; Gen. Samuel Thomas, president of the Louisville, New Albany & Chicago Railway Company, New York, N. Y.; Hon. Chauncey M. Depew, president of the New York Central & Hudson River Railroad Company, New York, N. Y.; E. C. Smith, president of the Central Vermont Railroad Company, St. Albans, Vt.; W. C. Van Horn, president of the Canadian Pacific Railway Company, Montreal, Canada; Thomas Lowry, president of the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Minneapolis, Minn.; J. R. Maxwell, president of the Central Railroad Company of New Jersey, New York, N. Y.; William Bliss, president of the Boston & Albany Railroad Company, Boston, Mass.; Lucius Tuttle,

president of the Boston & Maine Railroad Company, Boston, Mass.; A. A. McLeod, president of the New York and New England Railroad Company, Boston, Mass.; H. S. Marey, president of the Fitchburg Railroad Company, Boston, Mass.; Arthur Sewell, president of the Maine Central Railroad Company, Boston, Mass.; Hon. George B. Roberts, president of the Pennsylvania Railroad Company, Philadelphia, Pa.; Joseph S. Harris, president of the Philadelphia & Reading Railroad Company, Philadelphia, Pa.; Charles F. Mayer, president of the Baltimore & Ohio Railroad Company, Baltimore, Md.; Frederick Smith, president of the Concord and Montreal Railroad Company, Manchester, N. H.; M. F. Plant, vice-president of the Alabama Midland Rail-

77 way Company, New York, N. Y.; R. G. Erwin, vice-president and general counsel, Savannah, Florida & Western Railway Company, New York, N. Y.

And not being advised of the name of the president, vice-president, or secretary of the following-named corporate defendants in this cause, such service was made on the date and in the manner aforesaid upon such corporate defendants themselves, to wit: The Grand Trunk Railway Company, Montreal, Canada; The Central Railroad and Banking Company of Georgia, Savannah, Ga.; The East Tennessee, Virginia & Georgia Railway Company, Knoxville, Tenn.; The Cincinnati, New Orleans & Texas Pacific Railway Company, Cincinnati, O.; The Jeffersonville, Madison & Indianapolis Railroad Company, Jeffersonville, Ind.; The Clyde Steamship Company, New York, N. Y.; The Ocean Steamship Company, Savannah, Ga.; The Providence & Stonington Steamship Company, New York, N. Y.; The New York & Texas Steamship Company, New York, N. Y.; The Citizens Steamboat Company, Troy, N. Y.; The Hartford & New York Transportation Company, Hartford, Ct.; The New Haven Steamboat Company, New York, N. Y.; The People's Line Steamers, New York, N. Y.; The Maine Steamship Company, Portland, Me.; The Bridgeport Steamboat Company, New York, N. Y.; The Norwich & New York Transportation Company, Boston, Mass.; The Housatonic

78 Railroad Company, New Haven, Ct.; The Old Colony Railroad Company, Boston, Mass.; The Connecticut River Railroad Company, Springfield, Mass.; The Providence & Springfield Railroad Company, Boston, Mass.; The Cheshire Railroad Company, Boston, Mass.; The Metropolitan Steamship Company, New York, N. Y.

In testimony whereof I have hereunto set my hand and affixed the seal of the Interstate Commerce Commission at Washington, D. C., this day of January, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.]

EDW. A. MOSELEY,

Secretary Interstate Commerce Commission.

(Indorsed:) Filed this 29th day of January, A. D. 1894. J. W. Dimmick, clerk. Recorded in Book M. M., page 93.

79 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

The separate answer of the Illinois Central Railroad Company to the petition of the Interstate Commerce Commission in the above-entitled cause, respectfully says :

That it has not to its knowledge violated the order of the Commission in charging and collecting higher rates from the designated points in said order to Troy, Alabama, than authorized. In fact, since the promulgation of the order by the Commission this respondent can not find that it has taken any goods for shipment from the designated points in the six orders that would come under the purview of the Commission's order

ILLINOIS CENTRAL RAILROAD COMPANY,
 By M. C. MARKHAM, *Asst. Traffic Manager.*
 (Sgd.) JOS. FENTRESS, *General Solicitor.*
 (Sgd.)

STATE OF ILLINOIS, *County of Cook, ss :*

M. C. Markham, being duly sworn, says he is the assistant traffic manager of the Illinois Central Railroad Company, defendant in this proceeding, and that the foregoing answer is true as he verily believes.

80 Subscribed and sworn to before me this 6th day of February, A. D. 1894.

[SEAL.]

(Sgd.)

EDWARD P. SKEENE,
Notary Public.

(Indorsed :) No. 158. U. S. circuit court mid. dist. of Ala. Interstate Commerce Commissioner vs. Alabama Midland Railway Co. et al. Answer of Illinois Central R. R. Filed Feb. 8, '94. J. W. Dimmick, clerk. Recorded in book M. M., page 97.

81 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } No. 158. In equity.

Answer of the Old Colony Railroad Company.

The Old Colony Railroad Company, for answer to the petition in this cause and to any and all proceedings therein against it, says :

First. On the fifth day of April, 1893, it leased all its railroads, railroad property and franchise to the New York, New Haven and Hartford Railroad Company for a term of ninety-nine years, and then delivered said railroads and railroad property to said lessee, since which time it has not possessed, operated, or controlled the same.

Second. It has not knowingly at any time failed to obey any order of the Commission in this cause, and has no connection with or knowledge of the matters and things set forth in the petition as to the discrimination therein complained of at any time. It never directly or indirectly regulated its tariffs or charges, or did any act or thing to cause the discrimination complained of, and had no knowledge, and now has no knowledge, as to the existence of such discrimination except what is given it by the petition and proceedings in this cause.

Wherefore it respectfully submits that it is not a proper party to the further prosecution of this cause, and prays to be hence dismissed.

OLD COLONY RAILROAD COMPANY,
By B. B. TORREY, *Treasurer*.

COMMONWEALTH OF MASSACHUSETTS,

County of Suffolk:

Benjamin B. Torrey, being duly sworn, says that he is the treasurer of the Old Colony Railroad Company, defendant in this proceeding, and that the foregoing answer is true to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this 7th day of February, 1894.

J. M. BENTON, Jr.,
Justice of the Peace.

J. H. BENTON, Jr., of *Counsel*.

83 (Indorsed:) Filed Feb. 10, 1894. J. W. Dimmick, clerk. J. H. Benton, jr., counsel. Recorded in book M. M., page 96.

84 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.

THE ALABAMA MIDLAND RAILWAY COMPANY et al.

No. 158. In equity.

And now comes the Central Railroad & Banking Company of Georgia and moves to set aside the service which has been made upon it in the above-stated cause, and pleads to the jurisdiction of this honorable court as against this defendant for the following reasons:

First. This defendant is not now and never has been a resident or inhabitant of the middle district of Alabama, and has no place of business or office therein, and does not do any business therein, and did not at the time of the filing of the said bill of complaint.

Second. No subpoena, as required by the rules of this honorable court, and of the Supreme Court of the United States, and by the laws of the United States, has been served upon this defendant in the above-stated cause, and therefore no legal and valid service whereby this defendant is made a party to the said cause has been had.

Third. This court is without power or jurisdiction to pass any order in this cause by which service of the said bill of complaint may be perfected upon this defendant by sending a copy of the bill by registered

mail, or by another method than by having the same served according to the statute in such cases made and provided and the rules of court.

THE CENTRAL RAILROAD & BANKING
COMPANY OF GEORGIA,
By LAWTON & CUNNINGHAM, &
ROQUEMORE & WHITE,
its Solicitors.

(Indorsed:) No. 158. U. S. circuit court, mid. dist. of Ala. Interstate Commerce Commission vs. Alabama Midland Railway Co. et als. Motion of C. R. R. Filed Feb. 14, '94. J. W. Dimmick, clerk. Recorded in book M. M., page 97.

§ 5 In circuit court U. S., middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

Comes the Western Railway of Alabama, one of the respondents in above cause, and for answer to the petition filed admits that it was impleaded by the Board of Trade of Troy, Ala., together with other defendants, as stated in said petition, and that the complainant, The Interstate Commerce Commission, rendered a report in respect thereof which included its findings and conclusions with respect to the same, but this respondent denies that it was ever engaged in the transportation of persons and property under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, and particularly from Troy, Alabama, as is alleged in said petition. It further denies that it had violated the provisions of the said act entitled "An act to regulate commerce" in the certain respects as was stated in the petition of the Board of Trade of Troy, and it further denies that the said complainant, The Interstate Commerce Commission, duly and legally determined the matters and things in controversy, as is alleged in said petition, but, on the contrary, this respondent avers that petitioner not only had no authority or jurisdiction over this respondent in said proceeding, but that its findings of fact upon which its conclusions were based were wrong, not justified by the evidence, and contrary to law and equity.

Wherefore respondent prays that it be allowed to go hence with its costs in this behalf expended.

GEO. P. HARRISON,
Genl. Counsel & Solicitor Western Railway of Ala.

(Indorsed:) No. 158. In equity. The Interstate Commerce Commission vs. The Alabama Midland Railway Co. et al. Answer of the Western Railway of Alabama. Filed Feb. 15, '94. J. W. Dimmick, clerk. Recorded in Book M. M., page 98. Geo. P. Harrison, sol. for Western Ry. of Ala.

86 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY et al.		

And now comes the Kansas City, Memphis and Birmingham Railroad Company and moves to set aside the service which has been made upon it in the above-stated cause, and pleads to the jurisdiction of this honorable court as against this defendant for the following reasons :

1. This defendant is not now and never has been a resident or inhabitant of the middle district of Alabama, and has no place of business or office therein, and does not do any business therein, and did not at the time of the filing of the said bill of complaint.

2. No subpoena, as required by the rules of this honorable court and of the Supreme Court of the United States, and by the laws of the United States, has been served upon this defendant in the above-stated case, and therefore no legal and valid service whereby this defendant is made a party to this cause has been had.

3. This court is without power or jurisdiction to pass any order in this cause by which service of the said bill of complaint may be perfected upon this defendant by sending a copy of the bill by registered mail, or by another method than by having the same served according to the statute in such cases made and provided and the rules of court.

WALLACE PRATT, & HEWITT, WALKER & PORTER,
Solicitors for Respondent K. C., M. & B. R. R. Co.

(Indorsed :) No. 158. U. S. circuit et., md. district Ala. Interstate Commerce Commission vs. Alabama Midland R. R. Co. et al. Motion & plea of K. C., M. & B. R. R. Co. Filed Feb. 16, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 101.

87 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY et al.		

And now comes the Kansas City court, Fort Scott and Memphis Railroad Company and moves to set aside the service which has been made upon it in the above-stated cause, and pleads to the jurisdiction of this honorable court as against this defendant for the following reasons :

1. This defendant is not now, and never has been, a resident or inhabitant of the middle district of Alabama, and has no place of business or office therein, and does not do any business therein, and did not at the time of the filing of the said bill of complaint.

2. No subpoena, as required by the rules of this honorable court and of the Supreme Court of the United States, and by the laws of the United States, has been served upon this defendant in the above-stated cause, and therefore no legal or valid service whereby this defendant is made a party to the said cause has been had.

3. This court is without power or jurisdiction to pass any order in this cause by which service of the said bill of complaint may be perfected upon this defendant by sending a copy of the bill by registered mail, or by another method than by having the same served according to the statute in such cases made and provided and the rules of court.

WALLACE PRATT, & HEWITT, WALKER & PORTER,
Solicitors for Respondent K. C., F. S. & M. R. R. Co.

(Indorsed :) No. 158. U. S. circuit ct., md. district of Alabama. Interstate Commerce Commission vs. Alabama Midland R. R. Co. Motion and plea of K. C., F. S. & M. R. R. Co. Filed Feb. 16, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 109.

88 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY	
et al., The People's Line Steamers impleaded.	

The People's Line Steamers, appearing specially in this suit, alleges:

First. That a copy of the order of this court herein, dated the 20th day of January, 1894, was received through the mail on the 29th day of January, 1894, with a printed copy of the petition, and of the proceedings in the matter of this petition this respondent theretofore had no knowledge.

Second. This respondent denies the allegation on page 6 of the printed record as to the incorporation of this respondent, and alleges that the People's Line Steamers is the title of a business conducted at pier 41 (old), North River, in the city of New York, N. Y., and in the city of Albany, N. Y., for the transportation of passengers and goods between the said cities of New York and Albany within the State of New York, and that it is informed and believes there is no corporation of said name managing or conducting said business.

And for answer to the petition herein respectfully shows to the court:

I. That this respondent has no knowledge or information sufficient to form a belief as to the truth of the allegations in said petition, and has no knowledge as to the truth of the allegations in the petition of the Board of

Trade of Troy, Alabama, and therefore denies the same; and this respondent further denies that upon the route of the business before mentioned it has made any discrimination whatever for or against the localities mentioned in the said petition.

II. This respondent further answering says that it has no intention to violate the act to regulate commerce, as alleged in said petition, and in particular has no intention to discriminate against the city of Troy, in Pike County, Alabama, as therein alleged or in any other particular, but that

on the contrary this respondent has always been and is now desirous of conforming in all respects to the requirements of law in all matters to which said petition relates.

Wherefore your respondent prays that the petition of the complainant may be dismissed, and that this respondent have such other and further relief as in the premises may be just.

W. P. PRENTICE,
Attorney for Respondent above named.

STATE OF NEW YORK,
County of New York, ss:

Edwin C. Shaffer, being duly sworn, says that he is general freight agent at Albany, N. Y., of the respondent, The People's Line Steamers; that he has read over the foregoing plea and answer, and knows the facts thereof, and that the matters therein set forth are true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

E. C. SHAFFER.

Subscribed and sworn to before me this 14th day of February, 1894.

ROBERT KELLY PRENTICE,
Notary Public, New York County.

90 (Indorsed:) No. 158. U. S. circuit court, middle district of Alabama. In equity, No. 158. The Interstate Commerce Commission vs. The Alabama Midland Railway Co., The People's Line Steamers impl'd. Special plea and answer (verified). W. P. Prentice, att'y for People's Line Steamers, 155 Broadway, New York, N. Y. Filed Feb'y 16, 1894, J. W. Dimmick, clerk. Recorded in book M. M., page 104.

91 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILROAD COMPANY		
et al.		

The answer of the Pennsylvania Railroad Company to the petition filed in the above-stated case.

This defendant, appearing to the said petition under and pursuant to the order of your honorable court made on the twentieth day of January, 1894, received by its president by mail in the city of Philadelphia on or about the twenty-sixth day of January, 1894, most respectfully protesting, states that its principal office not being situate in the judicial district of the circuit court of the United States for the middle district of Alabama; nor the alleged violation or disobedience by it of the order of the Interstate Commerce Commission, referred to in said petition, happening within the judicial district of the circuit court of the United States for

the middle district of Alabama, the petitioner was not authorized under the act to regulate commerce as amended to file its petition as against this defendant in this court. Wherefore, without more, this defendant prays that the said petition shall as to it be dismissed.

92 This defendant, likewise protesting against the said petition, excepts thereto because it says that said petition does not set out with sufficient certainty the charge or charges made against the said defendants, or against this defendant, nor the fact or facts relied on, and on which the same are founded; and further, in that the proceedings had and taken by and before the Interstate Commerce Commission are not well and sufficiently pleaded, nor pleaded according to their legal effect, nor so as to disclose with reasonable certainty what the said defendants, or this defendant, were or was required to do and observe thereunder. Wherefore, without more, this defendant prays that the said petition shall as to it be dismissed.

And this defendant, without conceding the jurisdiction of your honorable court, or waiving the foregoing plea, protests, exceptions, and prayers for dismissal of this petition as to this defendant, but expressly reserving to itself all rights, benefits, and advantages resulting therefrom as fully as if it had rested solely thereon, for answer to said petition saith:

1st. That this respondent is not a party to the rates which are the subject-matter of complaint in this case, because its lines are not a part of any route for transportation of freight to Montgomery through Troy, and because, although its lines do form part of other routes to both Montgomery and Troy, yet by all these routes Troy, not Montgomery, is the further point; that in the last sentence of paragraph 2 of the answer of this defendant before the Interstate Commerce Commission (being Exhibit I to the petition filed in this cause) the words "Troy" and "Montgomery" were by inadvertence transposed; and that this defendant intended and

93 believed this error to have been corrected and amended by the letter written on behalf of this defendant to the Interstate Commerce Commission under date of October 7th, 1892 (which was also communicated to the counsel for complainant), a copy of which is hereto attached and marked Exhibit A.

2nd. This defendant avers that the conclusions of the said plaintiff Commission, if they were intended to affect this defendant, were not justified by the law or the facts.

Wherefore, this defendant prays that the petition in this case may be dismissed as to it, not only for want of jurisdiction and because of defective petition as hereinbefore prayed for, but also for lack of just foundation for relief in fact and in law.

Witness the corporate seal of said The Pennsylvania Railroad Company hereto attached, duly attested, this tenth day of February, anno Domini one thousand eight hundred and ninety-four.

THE PENNSYLVANIA RAILROAD COMPANY,
By FRANK THOMSON, *Vice-President.*

Attest :
[SEAL.]

J. C. SIMS, *Secretary.*

PHILADELPHIA, *October 7th, 1892.*

Board of Trade of Troy, Alabama, vs. The Alabama Midland Railway Company. Before the Interstate Commerce Commission.

To the INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

GENTLEMEN : My attention is called to the fact that by an inadvertence in the last sentence of the second paragraph of the answer of this company in the case stated in the caption where the words were used, "That by none of these routes stated above is freight transported to Troy, Alabama, via Montgomery, Alabama," the words "Troy" and "Montgomery" were transposed. The sentence as it was intended to be written and as we desire it to be read should be as follows: "That by none of these routes stated above is freight transported to Montgomery, Alabama, via Troy, Alabama," &c.

I take it this letter will be regarded as sufficient amendment, and I have sent a copy of it to the counsel for complainants.

Yours truly,

JAMES A. LOGAN, A. G. S.

95 (Indorsed:) No. 158. Interstate Commerce Com'n vs. The Ala. Mid. Ry. Co. et al. Plea and answer of Penna. R. R. Co. Filed Feb. 16, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 106.

96 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION,	}	No. 158. In equity.
petitioner,		
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COM-	}	
pany, The Baltimore and Ohio Railroad		
Company, and others, respondents.		

Separate answer of the Baltimore & Ohio R. R. Co.

To the honorable the Judges of the Circuit Court of the United States in and for the Middle District of Alabama, sitting in equity.

This respondent, The Baltimore & Ohio Railroad Company, answering says:

1. This respondent admits that it is a corporation of the State of Maryland, as alleged in the petition herein, and further says that as such corporation it owns, controls, and operates a main line of railroad from Philadelphia, in the State of Pennsylvania, through the States of Pennsylvania, Delaware, and Maryland, the District of Columbia, and the States of West Virginia, Ohio, Indiana, and Illinois to Chicago, in the State of Illinois, with certain branch lines extending, respectively, from

said main line to Staunton, in the State of Virginia; Paekersburg, in the State of West Virginia; Pittsburgh, in the State of Pennsylvania; on which main line and branches the respondent conducts the business of a common carrier of freight and passengers by railroad.

97 2. That of none of the routes mentioned and described in petitioner's Exhibit AA, filed herein, does the line of this respondent or any part thereof form a part, and none of the facts and conclusions stated in said Exhibit AA are therein stated with any specific relation to this respondent.

3. That the only shipments or rates mentioned in said Exhibit AA, in which this respondent has participated, are those "all rail" shipments and rates from New York, Baltimore, and Northeastern cities, mentioned on pages 4, 5, 6, & 7 of said Exhibit AA, and such shipments passing over part of the line of this respondent did not take any of the routes mentioned on pages 4 & 5 of said exhibit, but are carried by this respondent from Philadelphia to connection with the Richmond & Danville Railroad Company's line at Alexandria, Virginia, and there delivered to the Richmond and Danville Railroad Company. The tariff of rates under which the shipments above mentioned were carried was withdrawn November 13th, 1893, since which date this respondent has not made through rates or issued through bills of lading for such shipments.

That if the report and opinion of the Commission contained in said Exhibit AA and the order of the Commission thereon filed herein as Exhibit AB be sustained, held lawful, and enforced by this court as by the petitioner prayed, this respondent would be affected by the fifth clause of said order by which this respondent is ordered to cease and desist and wholly abstain from charging, demanding, collecting, or receiving any greater compensation in the aggregate for services rendered in such transportation than is specified as follows, to wit: "No. 5. On shipments of class goods from New York, Baltimore, or other Northeastern points to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid." That no other provision or requirement of said order has or has ever had any application to this respondent or the business conducted by it as a common carrier of freight and passengers by railroad.

98 4. And, further answering, this respondent says that the requirement of the fifth clause of said order of the Commission above quoted, to enforce which this proceeding is instituted, should not be enforced by this honorable court, as prayed by the petitioner, for the reason, among others, that almost all the shipments of class goods from New York, Baltimore, and Northeastern points to Troy, Alabama, passing over the line of this respondent, were at the date of said order and prior thereto and ever since have been routed via the Richmond and Danville Railroad Company's line from Alexandria to Atlanta, and thence via the Atlanta & West Point Railroad to Montgomery. That a small number of such shipments may have been routed via the Richmond & Danville Railroad Company's line to Atlanta, thence by the Georgia Pacific Railway to Birmingham, thence by the Louisville & Nashville to Montgomery. In no case did or could any such shipment pass through Troy, Alabama, in order to reach Montgomery; but, on the contrary, all such shipments passed through Montgomery to reach Troy.

The said order of the Commission, requiring the rates on such shipments to be the same to Troy as to Montgomery, if applied to the route over this respondent's line, and thence as above described, would deprive this respondent of the right to receive the same compensation for the transportation of such shipments over its line when consigned to

99 Troy as it receives when consigned to Montgomery, because the charges of the Central Railroad of Georgia or the Alabama Midland from Montgomery to Troy must be taken out of the sum which the lines north of Montgomery would receive for the shipment to Montgomery.

This respondent submits that no facts or reasons are found or given in the said petitioner's Exhibit AA that could justify any order having such a result as against this respondent. This respondent can not believe that the order of the Commission was intended to have such an effect or to apply at all to the route of which this respondent's line forms a part, both because no facts or reasons are found or given to justify such an order as applied to said route, and because neither the Richmond & Danville Railroad Company nor the Atlanta & West Point Railroad Company is a party to the proceedings either before the said Commission or in this court.

And this respondent submits that it has been made a party defendant to this proceeding by inadvertence; and further states that if it be sought to make said order binding upon it then the same is illegal as exceeding the powers of the Interstate Commerce Commission, the petitioner herein, to make, and that the same is unjust and unreasonable and should not be enforced.

And this respondent, having fully answered, prays that this complaint may be dismissed as to it.

THE BALTIMORE & OHIO RAILROAD CO.,
By THOMAS M. KING, *Second Vice-President*.
JOHN K. COWEN, *Atty. for B. & O. R. R. Co.*

Attest :
[SEAL.]

ANDREW ANDERSON, *Secy.*

100 STATE OF MARYLAND,
City of Baltimore, to wit:

Before me, the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared Thomas M. King, who being duly sworn, deposes and says that he is the second vice-president of the Baltimore & Ohio Railroad Company, the respondent named in the foregoing answer; that the matters and things therein stated are true, as he verily believes.

THOMAS M. KING.

Sworn to and subscribed before me this 15th day of February, 1894.
[SEAL.]

GEO. W. HAULENBEEK,
Notary Public.

101 (Indorsed:) Filed 16th day of Feby., 1894. J. W. Dimanick,
clerk. Recorded in book MM., page 102.

In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} = 158. In equity.
vs.	
THE ALABAMA MIDLAND RAILWAY COMPANY et al.	

Demurrer of the Boston and Maine Railroad, one of the defendants named in the bill of complaint aforesaid.

And now comes the defendant, the aforesaid Boston and Maine Railroad, and demurs to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner or form as the same are therein set forth, demurs to the said bill.

1. And for cause of demurrer shows that it appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed for by the bill against this defendant.

2. And for further cause of demurrer shows that it does not appear by the said bill that this defendant has in any way violated the fourth or any section of the act entitled "An act to regulate commerce," as in said bill of complaint alleged, or has violated any order of said Commission,
103 as in said bill alleged. And in particular that no unjust or unlawful discrimination or rate as against any parties or places in said bill referred to, as alleged in said bill, is shown by said bill to have been at any time made by this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant doth demur thereto. And it prays the judgment of this honorable court whether it shall be compelled to make any answer to the said bill, and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

By its solicitor,

SIGOURNEY BUTLER.

SIGOURNEY BUTLER,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SIGOURNEY BUTLER,
Of Counsel for Defendant, the Boston & Maine Railroad.

BOSTON, February 14, 1894.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, ss:

Personally appeared William F. Berry, and being duly sworn, deposes and says: I am the general traffic manager of the said Boston & Maine Railroad, one of the said defendants.

The foregoing demurrer is not interposed for delay.

WILLIAM F. BERRY.

Sworn to before me this fourteenth day of February, 1894.

[SEAL.]

ANDREW L. KNIGHT,
Notary Public.

104 (Indorsed :) Filed this 16th day February, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 108.

105 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
vs.	
THE ALABAMA MIDLAND RAILWAY COMPANY et al.	

Answer of the Housatonic Railroad Company.

The Housatonic Railroad Company, for answer to the petition in this cause and to any and all proceedings therein against it, says :

First. On the tenth day of September, 1892, it leased all its railroads, railroad property, and franchise to the New York, New Haven and Hartford Railroad Company for the term of ninety-nine years, beginning the first day of July, 1892, and then delivered said railroads and railroad property to said lessee, since which time it has not possessed, operated, or controlled the same.

Second. It has not knowingly at any time failed to obey any order of the Commission in this cause, and has no connection with or knowledge of the matters and things set forth in the petition as to the discrimination therein complained of at any time. It never directly or indirectly regulated its tariffs or charges, or did any act or thing to cause the discrimination complained of, and had no knowledge and now has no knowledge as to the existence of such discrimination except what is given it by the petition and proceedings in this cause.

Wherefore it respectfully submits that it is not a proper party to the further prosecution of this cause, and prays to be hence dismissed.

HOUSATONIC RAILROAD COMPANY,
By WM. E. BARNETT, *Secretary.*

NEW HAVEN, Ct., Feb. 14, 1894.

STATE OF CONNECTICUT,

County of New Haven, ss :

William E. Barnett, being duly sworn, says that he is the secretary of the Housatonic Railroad Company, defendant in this proceeding, and that the foregoing instrument is true to the best of his knowledge and belief.

WM. E. BARNETT.

Subscribed and sworn to before me this fourteenth day of February, 1894.

[SEAL.]

AVERY CLARK,
Notary Public.

106 (Indorsed :) Filed Feb'y 16, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 101.

107 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
vs.		
THE ALABAMA MIDLAND RAILWAY COMPANY		
et al.		

The separate answer of the Alabama Midland Railway Company.

And now comes the defendant, The Alabama Midland Railway Company, and reserving unto itself all and every exception which may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, and for answer thereto, or to so much thereof as this defendant is advised and believes to be material for it to make answer unto, answers and says:

First. It admits that it is a corporation organized by and existing under the laws of the State of Alabama, and having its principal office at Montgomery, in the State of Alabama.

Second. It admits that it was heretofore impleaded in a controversy before the Interstate Commerce Commission upon the petition of the Board of Trade of Troy, Ala., and that the several stops were taken, judgments rendered, and orders issued by the said Interstate Commerce Commission as are set out in the bill of complaint.

Third. It denies that at the hearing before the Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act to regulate commerce in any respect, but, on the contrary, shows that it has not violated the said act to regulate commerce in the matter which forms the subject of controversy with the Board of Trade of Troy, Ala., but that its actings and doings, which have been the subject of inquiry before the Interstate Commerce Commission, were in all respects lawful and valid; and this defendant denies that it has in any respect brought itself within the jurisdiction of the said Interstate Commerce Commission by any violation of law or unlawful conduct.

Fourth. This defendant avers and charges that the order of the said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit AB, was an improper and unlawful order, and was not justified either by the law or by the evidence which was taken before the said Interstate Commerce Commission; and denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time, or since then, guilty of any violation of the law as set forth in the said report and order of the Commission.

Fifth. And for further answer this defendant adopts the allegations of its answer filed before the Interstate Commerce Commission, and attached to the bill as Exhibit Q. And further answering, this defendant specially denies that a greater rate was charged to Troy than to Montgomery "under substantially similar circumstances and conditions,"

109 and denies that any of the rates alleged to have been charged by this defendant, as part of a continuous line of transportation, was in violation of the fourth section of the interstate commerce act, for the reason that the prohibition of said section, in said act, is limited to cases in which the circumstances and conditions are substantially similar. On

the contrary, this defendant avers that the circumstances and conditions at Montgomery are totally dissimilar from those which exist at Troy. Montgomery is situated on a navigable river, is the terminus of the Montgomery & Eufaula Railroad and the Alabama Midland Railway, and is located on the lines of the Louisville and Nashville Railroad and the Western Railway of Alabama, and is thus afforded many outlets; that foreign ports, as well as the Northern and Eastern markets of the United States, are reached by New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Port Royal, Charleston, West Point, and Norfolk, and the rail lines running to these several Eastern points necessarily compete fiercely with the water lines in order to secure a portion of Montgomery's business; that the rates to and from Montgomery to these South Atlantic and Gulf seaports are lower by water and can not be controlled by the rail lines running into Montgomery; and that said water lines of transportation are not subject to the provisions of said act; that Montgomery and the surrounding country (Troy included), both producers and consumers, are benefited by the competition at Montgomery; that the rates to and from Troy and other localities, in essential respects similarly situated, have been lowered by reason of this competition, and are themselves relatively fair and reasonable. The population of the city of Montgomery, within the police jurisdiction of said city, is nearly 40,000. The distance to the nearest coal & iron fields is not over sixty miles. The capital invested in manufacturing and industrial enterprises is 110 \$3,000,000, and the value of manufactured products annually is \$4,000,000. The volume of business done in any given year, within the corporate limits of said city, is \$40,000,000.

The railroads centering in the city of Montgomery are the Louisville & Nashville Railroad and the Mobile & Montgomery Railway, constituting a part of the Louisville & Nashville system; The Alabama Midland Railway and the Luverne Extension, constituting a part of the Plant system; the Savannah, Merits & Montgomery Railroad, the Western Railway of Alabama, the Montgomery & Selma road, and the Montgomery & Eufaula Railroad; the last named forming a part of the Georgia Central system. These various railroads run from a common center like the spokes of a wheel, to wit, north, northeast, east, southeast, west, southwest, west, and northwest. The Montgomery, Tuscaloosa & St. Louis Railroad is under process of construction, and when finished will reach the coal and iron fields of the State.

Montgomery is situated practically at the head of navigation of the Alabama River, reaching by water and rail transportation six great Gulf and Atlantic ports.

Tonnage for the year 1892, ending March 1st, 1892, received by various railroads at Montgomery proper, was 18,829,877 pounds. Tonnage of west and southwest freight received for this city and connections during said year was 647,880,688 pounds, or 21,596 car loads, and have not been less since that year.

Montgomery is the capital of Alabama, and an historic city, which is visited by many thousands of people every year. The business on the Alabama River, according to the report of the United States engineer for the year 1891, was 52,349 bales of cotton carried by boat and 44,500 111 tons of freight. The value of the commerce on the Alabama River for that year (1891) was \$8,175,650, and has not been less

since said year. Montgomery has three cotton factories, owned and controlled by persons residing here, employing hands to the number of 1,200, and consuming cotton to the amount of 18,000 bales; besides has forty-one manufacturing and industrial enterprises of various kinds, employing total number of 2,700 hands. The cotton received for the year 1891 amounted to 165,000 bales, while the cotton compressed for said year was 156,324 bales, and have not been less since said year. There are twenty-one wholesale firms who buy from the West and eleven wholesale firms who buy from the East. Montgomery is entitled to the trade of and reaches points in southwest Georgia, Florida, central and south Alabama, and west Mississippi. The Alabama River is navigable all the year round from Montgomery to Mobile, a distance of 367 miles. There are three lines of steamers plying between Montgomery and Mobile, and operating the boats "Tinsie Moore," "Alto," "Nettie Quill," and "Carrier." Troy is an inland town fifty-two miles southeast of Montgomery and eighty-five miles slightly southwest of Columbus, Georgia. The population of Troy does not exceed 4,000; the cotton receipts at that point on an average are about 30,000 bales annually, while the volume of trade for any given year does not amount to more than three million dollars.

And further answering this defendant denies that in the said proceedings before the Interstate Commerce Commission it was to appear that the provisions of the act to regulate commerce have been violated by this defendant in the respects charged in the said petition before the Commission, and avers that the matters in controversy have never been legally determined by said Commission; and denies and disputes the legal or binding effect of the order passed by the Commission.

112-114 And this defendant, having fully answered, prays to be hence dismissed with its reasonable costs, in this behalf most wrongfully sustained.

A. A. WILEY,
Solicitor for the Defendant,
The Alabama Midland Railway Company.

115 (Indorsed:) Filed Feb. 28 94. J. W. Dimpick, clerk. Recorded in book M. M., page 112.

116 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION <i>vs.</i> THE ALABAMA MIDLAND RAILWAY COMPANY <i>et al.</i>	}	No. 158. In equity.
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The separate answer of the Savannah, Florida & Western Railway Company

And now comes the defendant, The Savannah, Florida & Western Railway Company, and reserving unto itself all and every exception which may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, and for answer thereto, or to so much

thereof as this defendant is advised and believes to be material for it to make answer unto, answers and says:

First. It admits that it is a corporation organized by and existing under the laws of the State of Georgia, and having its principal office at Savannah, in the State of Georgia.

Second. It admits that it was heretofore impleaded in a controversy before the Interstate Commerce Commission upon the petition of the Board of Trade of Troy, Ala., and that the several steps were taken, judgments rendered, and orders issued by the said Interstate Commerce Commission as are set out in the bill of complaint.

Third. It denies that at the hearing before the Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act to regulate commerce in any respect, but on the contrary shows that it has not violated the said act to regulate commerce in the matter which forms the subject of controversy with the Board of Trade of Troy, Ala., but that its actions and doings which have been the subject of inquiry before the Interstate Commerce Commission were in all respects lawful and valid. And this defendant denies that it has in any respect brought itself within the jurisdiction of the said Interstate Commerce Commission by any violation of law or unlawful conduct.

Fourth. This defendant avers & charges that the order of the said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit A, was an improper and unlawful order and was not justified either by the law or by the evidence which was taken before the said Interstate Commerce Commission; and denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time or since then guilty of any violation of the law as set forth in the said report and order of the Commission.

Fifth. And for further answer this defendant adopts the allegations of its answer filed before the Interstate Commerce Commission and attached to the bill as Exhibit U. And further answering, this defendant specially denies that a greater rate was charged to Troy than to Montgomery "under substantially similar circumstances and conditions," and denies that any

of the rates alleged to have been charged by this defendant as part of its continuous line of transportation was in violation of the fourth section of the interstate commerce act, for the reason that the prohibition of said section in said act is limited to cases in which the circumstances and conditions are substantially similar. On the contrary, this defendant avers that the circumstances and conditions at Montgomery are totally dissimilar from those which exist at Troy. Montgomery is situated on a navigable river, is the terminus of the Montgomery & Eufaula Railroad and the Alabama Midland Railway, and is located on the lines of the Louisville and Nashville Railroad and the Western Railway of Alabama, and is thus afforded many outlets; that foreign ports as well as the Northern and Eastern markets of the United States are reached by New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Port Royal, Charleston, West Point, and Norfolk, and the rail lines running to these several Eastern points necessarily compete fiercely with the water lines in order to secure a portion of Montgomery's business; that the rates to and from Montgomery to these South Atlantic and Gulf seaports are lower by water and can not be controlled by the rail lines running into Montgomery,

& that said lines of transportation are not subject to the provisions of said act; that Montgomery and the surrounding country (Troy included), both producers and consumers, are benefited by the competition at Montgomery; that the rates to and from Troy and other localities, in essential respects similarly situated, have been lowered by reason of this competition and are themselves relatively fair and reasonable. The population of the city of Montgomery within the police jurisdiction of said city is nearly 40,000. The distance to the nearest coal and iron fields is not over sixty miles. The capital invested in manufacturing and industrial enterprises is \$3,000,000, and the value of manufactured products annually is \$4,000,000. The volume of business done in any given year within the corporate limits of said city is \$40,000,000.

The railroads centering in the city of Montgomery are the Louisville & Nashville Railroad and the Mobile & Montgomery Railway, constituting a part of the Louisville & Nashville system, the Alabama Midland Railway and the Laverne Extension constituting a part of the Plant system; the Savannah, Americus & Montgomery Railroad, the Western Railway of Alabama, the Montgomery & Selma road, and the Montgomery & Eufaula Railroad, the last named forming a part of the Georgia Central system. These various railroads run from a common center, like the spokes of a wheel, to wit, north, northeast, east, southeast, west, southwest, west, and northwest. The Montgomery, Tuscaloosa & St. Louis Railroad is under process of construction, and when finished will reach the coal fields of the State.

Montgomery is situated practically at the head of navigation of the Alabama River, reaching by water and rail transportation six great Gulf and Atlantic ports.

Tonnage for the year 1892, ending March 1st, 1892, received by various railroads at Montgomery proper, was 18,829,877 pounds. Tonnage of west and southwest freight received for this city and connections during said year was 647,880,688 pounds, or 21,596 car loads, and has not been less since that year.

Montgomery is the capital of Alabama, and an historic city, which is visited by many thousands of people every year. The business on the Alabama River, according to the report of the United States engineer for the year 1891, was 52,349 bales of cotton carried by boat and 44,500 tons of freight. The value of the commerce on the Alabama River for that year (1891) was \$8,175,650, and has not been less since said year. Montgomery has three cotton factories, owned and controlled by persons residing here, employing hands to the number of 1,200 and consuming cotton to the amount of 18,000 bales, besides has forty-one manufacturing and industrial enterprises of various kinds, employing total number of 2,700 hands. The cotton received for the year 1891 amounted to 165,000 bales, while the cotton compressed for said year was 156,324 bales, and have not been less since said year. There are twenty-one wholesale firms who buy from the West and eleven wholesale firms who buy from the East. Montgomery is entitled to the trade of and reaches points in southwest Georgia, Florida, central and south Alabama, and west Mississippi. The Alabama River is navigable all the year round from Montgomery to Mobile, a distance of 367 miles. There are three lines of steamers plying between Montgomery and Mobile, and operating the boats

"Tinsie Moore," "Alto," "Nettie Quill," and "Carrier." Troy is an inland town fifty-two miles southeast of Montgomery and eighty-five miles slightly southwest of Columbus, Georgia. The population of Troy does not exceed 4,000. The cotton receipts at that point, on an average, are about 30,000 bales annually, while the volume of trade for any given year does not amount to more than three million dollars.

And further answering, this defendant denies that in the said proceedings before the Interstate Commerce Commission it was to appear, that the provisions of the act to regulate commerce has been violated by this defendant in the respects charged in the said petition before the Commission, and avers that the matters in controversy have never been legally determined by said Commission, and denies and disputes the legal or binding effect of the order passed by the Commission.

121 And this defendant having fully answered prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

ERWIN, DU BIGNON & CHISHOLM,
and A. A. WILEY,
*Solicitors for the Defendant The Savannah,
Florida & Western Railway Company.*

122 (Indorsed:) Filed Feb. 28, 1894. J. W. Dimmick, clerk.
Recorded in book M. M., page 115.

123 *The separate answer of The Louisville and Nashville Railroad Company to the petition filed by the Interstate Commerce Commission against the Alabama Midland Railway Company and this respondent and others in the circuit court of the United States sitting for the middle district of Alabama, in equity.*

This respondent, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this respondent is advised it is material or necessary for it to make answer to, answering says:

I.

Respondent admits that it is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in said State of Kentucky.

Respondent supposes it to be true that its codefendants are corporations created, chartered, and existing, respectively, under the laws of the respective States and having their respective principal offices at the respective places as mentioned and set forth in the petition.

II.

Respondent admits that at the time mentioned in the petition and now it was and is a common carrier, engaged in the transportation of persons and property by its several lines of railroad through several of the United States.

Respondent admits that it did then and does now unite with its codefendants, the Alabama Midland Railway Company and the Central Railroad and Banking Company of Georgia, in making and charging certain joint through tariff rates between Troy, Alabama, and New Orleans, Louisiana, Louisville, Kentucky, Cincinnati, Ohio, and St. Louis, Missouri.

Respondent denies that is under common control, management, or arrangement with any of its codefendants for continuous carriage or shipment through several or any of the United States.

Respondent is advised and insists that the words "under a common control, management, or arrangement," as used in the first section of the act to regulate commerce, have reference only to such carriers as are "engaged in the transportation of passengers or property partly by railroad and partly by water;" and this respondent is engaged in transportation "wholly by railroad."

III.

Respondent denies that it and its codefendants, or any of them, were "duly impleaded" in a controversy before said Interstate Commerce Commission. Respondent is advised and insists that said Commission is not a court; and that no one can be "duly impleaded" before it.

IV.

Respondent has no knowledge, information, or belief as to whether the "Board of Trade of Troy, Ala.," is a mercantile or other society; nor as to whether it is organized or exists as a corporation, under the laws of the State of Alabama; nor as to where it has its principal office.

V.

Respondent admits that Exhibit A to the petition in this court is a correct copy of petition which was filed before said Commission, on the 27th day of June, 1892.

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VI.

Respondent admits that Exhibit T to the petition in this court is a correct copy of the answer which this respondent filed on August 10, 1892, to said petition before said Commission.

Respondent supposes it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, R, S, U, V, W, X, Y, Z are correct copies of answers filed by the respective parties, at the respective dates, as mentioned in the petition filed in this court.

VII.

Respondent denies that said cause was ever at issue "upon the pleadings," or that it ever duly came on for "hearing" before said Commission, or that respondent or its attorney ever appeared before said Commission, at Troy, Ala., on November 11th, 1892, or on any other day.

VIII.

Respondent denies that it was ever made to appear to the satisfaction of said Commission that respondent or any of its codefendants had violated the provisions of the act to regulate commerce in any respect whatsoever.

IX.

Respondent denies that said Commission either duly or legally determined the matters or things in controversy.

Respondent admits that Exhibit AA to the petition in this court is a correct copy of a report in writing made by said Commission on Aug. 15th, 1893, and that it included the findings of fact upon which the conclusions of said Commission were based.

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X.

Respondent denies that said Commission duly formulated an order and notice in relation to said matters and things.

Respondent admits that Exhibit AB to the petition filed in this court is a correct copy of an order and notice which were made and issued by said Commission.

But respondent denies that said order and notice were made agreeably to the requirements of the statute in such cases made and provided; or that said order is in force or effect, though it may be true that it has never been vacated, set aside, altered, modified, or changed in any respect whatever.

XI.

Respondent admits that on or about Aug. 28th, 1893, properly authenticated copies of said report, order, and notice were delivered to respondent, and it supposes it to be true that similar copies were delivered to each of its codefendants.

XII.

Respondent denies that it has been unmindful of its duty or of any lawful decision or determination of said Commission, or that it has set at naught or disregarded the lawful authority of said Commission, or that it has willfully or knowingly or at all violated or disobeyed any lawful order of said Commission.

Respondent admits that it and its codefendants, The Alabama Midland Railroad Company and The Central Railroad and Banking Company of Georgia, have continued to charge, demand, collect, and receive a greater compensation for services rendered for transportation of property between

Troy, Alabama, and New Orleans, Louisiana; Louisville, Kentucky; Cincinnati, Ohio, and St. Louis, Missouri, than is specified in said order of said Commission; but respondent is advised and insists that said order is illegal and void in regard to the compensation which it assumed to fix for said services.

XIII.

Said Commission in effect ordered respondent and its codefendants, The Alabama Midland R. R. Co. and The Georgia Central R. R. & Banking Co., to cease and desist from charging or receiving any greater compensation, in the aggregate, for services rendered in the transportation of class goods shipped from Louisville, Kentucky, St. Louis, Missouri, or Cincinnati, Ohio, to Troy, Alabama, than is charged and collected on such shipments to Columbus, Georgia, and Eufaula, Alabama.

The effect of said order would be to make the following reductions in rates from Louisville, St. Louis, and Cincinnati, respectively, to Troy, viz :

- On 1st class 33 cts. per 100 lbs.
- On 2nd class 38 cts. per 100 lbs.
- On 3rd class 32 cts. per 100 lbs.
- On 4th class 27 cts. per 100 lbs.
- On 5th class 19½ cts. per 100 lbs.
- On 6th class 16 cts. per 100 lbs.
- On A class 17 cts. per 100 lbs.
- On B class 14 cts. per 100 lbs.
- On C class 8 cts. per 100 lbs.
- On D class 7 cts. per 100 lbs.
- On E class 19 cts. per 100 lbs.
- On H class 4 cts. per 100 lbs.
- On F class 16 cts. per barrel.

Respondent's lines of railway extend from Louisville, East St. Louis, and Cincinnati, respectively, to Montgomery, Alabama.

Troy is located on the Mobile & Girard Railroad, and on the Alabama Midland Railway; and such freights as respondent may transport from Louisville, St. Louis, and Cincinnati, respectively, destined to Troy, are delivered at Montgomery, Alabama, either to the Alabama Midland

128 Railway, which carries them to Troy, or to the Montgomery and Eufaula R. R., which carries them to Union Springs, Ala., where they are delivered to the Mobile & Girard R. R., which carries them to Troy.

Said Montgomery & Eufaula R. R. and said Mobile & Girard R. R. are owned, controlled, or operated by the Central R. R. & Banking Company of Georgia.

The through rates charged from Louisville, St. Louis, and Cincinnati, respectively, to Troy, are divided in certain proportions between respondent and the Alabama Midland R. R. Co., or between respondent and the Georgia Central R. R. and Banking Company, accordingly as respondent may deliver the freights to the one or to the other of said companies at Montgomery.

The proportion which respondent receives out of said through rates for transportation to Montgomery is the same whether the freights are delivered at Montgomery to the Alabama Midland R. R. Co. or to the Central R. R. & Banking Co. of Georgia.

The rates from Louisville, St. Louis, and Cincinnati, respectively, to Montgomery are just and reasonable; and said Commission admits in its report that there was no allegation and no proof that said rates were unreasonable in themselves.

Respondent avers that said through rates from Louisville, St. Louis, and Cincinnati, respectively, to Troy are just and reasonable, and that they do not unjustly discriminate against Troy.

Respondent's proportion of the through rates from Louisville, St. Louis, and Cincinnati, respectively, to Troy is just and reasonable, and it does not unjustly discriminate against Troy.

It would be unjust and unlawful to require respondent to reduce its proportion of said through rates, and respondent believes that it would be unjust and unlawful to compel the Alabama Midland R. R. Co. or the Georgia Central R. R. & Banking Co. to reduce their respective proportions of said through rates.

XIV.

Said Commission, in effect, further ordered respondent and its codefendants, The Alabama Midland R. R. Co. and The Georgia R. R. & Banking Company, to cease and desist from charging or receiving any greater compensation in the aggregate for services rendered in the transportation of cotton from Troy through Montgomery to New Orleans than 50 cents per 100 lbs.

The through rate on cotton from Troy to New Orleans via Montgomery was 68 cents per hundred pounds, and therefore the effect of said order would be to reduce said rate 18 cents per 100 lbs.

Respondent avers that said through rate is just and reasonable, and that it does not unjustly discriminate against Troy.

Of said through rate of 68 cents respondent receives 45 cents for transportation from Montgomery to New Orleans, and it receives the same whether the cotton is brought from Troy to Montgomery by the Alabama Midland R. R. Co. or by the Georgia Central R. R. & Banking Co.

Said rate of 45 cents is just and reasonable, and it does not unjustly discriminate against Troy.

It would be unjust and unlawful to require respondent to reduce said rate of 45 cents, and respondent believes that it would be unjust and unlawful to compel the Alabama Midland R. R. Co. or the Georgia R. R. & Banking Co. to reduce their respective proportions of said through rate of 68 cents.

And having fully answered, respondent prays to be hence dismissed with its reasonable costs.

ED. BAXTER, *Sol'r for Respondent, L. & N. R. R. Co.*

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LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
By M. H. SMITH, *President*.

Attest:

[L. & N. SEAL.]

J. H. ELLIS, *Secretary*.

STATE OF KENTUCKY, *Jefferson County*:

Personally appeared before me, G. W. B. Olmstead, a notary public duly appointed, commissioned, and qualified in and for the State and county aforesaid, M. H. Smith and J. H. Ellis, who are respectively the president and secretary of the Louisville and Nashville Railroad Com-

pany, the above-named respondent, and signed the foregoing answer and affixed thereto the seal of said company as the answer of said company.

Witness my hand and notarial seal of office, at Louisville, Ky., this 27th day of February, 1894.

[N. P. SEAL.]

G. W. B. OLMSTEAD,
Notary Public.

131 (Indorsed:) No. 158. Interstate Commerce Commission vs. Ala. Mid. Ry. Co. et al. Answer of respondent, L. & N. R. R. Co. Filed this 28th day of February, A. D. 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 118.

132 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE ALABAMA MIDLAND RAILWAY CO. ET ALS. }

Now comes the Concord & Montreal Railroad, one of the defendants named in the said bill, and moves that the order of court by which the bill was taken pro confesso against this defendant be set aside and that the defendant be allowed to answer to the bill.

SIGOURNEY BUTLER,
Solicitor for Deft., The Concord & Montreal R. R.

On consideration it is ordered that as to the Concord & Montreal Railroad the decree pro confesso is modified so as to allow said Concord & Montreal Railroad to plead to the petition.

Mar. 2, '94.

JOHN BRUCE, *Judge.*

(Indorsed:) No. 158. U. S. cir. court, mid. dist. of Ala. The Interstate Commerce Commission v. The Ala. Midland Railway Co. et als. Motion of Concord & Montreal R. R. to set aside decree pro confesso, etc. Filed in open court the 1st of March, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 123.

133 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE ALABAMA MIDLAND RAILWAY CO. ET AL. }

Now comes the Ocean Steamship Company, one of the defendants named in the said bill, & moves that the order of court by which the bill was taken as confessed against this defendant be set aside and that the said Ocean Steamship Company be allowed to file a motion to set aside the service made upon it in this cause, & a plea to the jurisdiction of this court, as to the person of this defendant & as to the subject-matter of the bill.

ROQUEMORE & WHITE,
Sol'rs for the Ocean Steamship Company.

On consideration of the foregoing motion it is ordered that it be allowed & said Ocean Steamship Company is hereby allowed to file such motion & plea as therein requested.

JOHN BRUCE, *Judge*.

MARCH 2, 1894.

(Indorsed :) No. 158. Interstate Com. Com'n vs. The Ala. Mid. Ry. Co. Motion to set aside decree pro confesso vs. Ocean S. S. Co., & for leave to file motion to set aside service & file plea to jurisdiction. Filed March 1, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 124.

134 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY et als.	

And now comes the Ocean Steamship Company and moves to set aside the service which has been made upon it in the above-stated cause, and pleads to the jurisdiction of this honorable court as against this defendant for the following reasons:

First. This defendant is not now and never has been a resident or inhabitant of the middle district of Alabama and has no place of business or office therein, and does not do any business therein and did not at the time of the filing of the said bill of complaint.

Second. No subpoena, as required by the rules of this honorable court and of the Supreme Court of the United States and by the laws of the United States, has been served upon this defendant in the above-stated cause, and therefore no legal and valid service whereby this defendant is made a party to the said cause has been had.

Third. This court is without power or jurisdiction to pass any order in this cause by which service of the said bill of complaint may be perfected upon this defendant by sending a copy of the bill by registered mail or by another method than by having the same served according to the statute in such cases made and provided and the rules of the court.

THE OCEAN STEAMSHIP COMPANY,
By ROQUEMORE & WHITE, *its Solicitors*.

(Indorsed :) No. 158. Interstate Com. Com'n vs. The Ala. Mid. Ry. Co. et al. Motion to set aside service, &c., of Ocean S. S. Co. Filed by leave of court Mch. 2, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 125. Roquemore & White.

135 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} #158. In equity.
vs.	
THE ALABAMA MIDLAND RAILWAY COMPANY et al.	

Demurrer of The Concord & Montreal Railroad, one of the defendants named in the bill of complaint aforesaid.

And now comes the defendant, the aforesaid Concord & Montreal Railroad, and demurs to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner or form as the same are therein set forth, demurs to the said bill.

1. And for cause of demurrer shows that it appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed for by the bill against this defendant.

2. And for further cause of demurrer shows that it does not appear by the said bill that this defendant has in any way violated the fourth or any section of the act entitled "An act to regulate commerce," as in said bill of complaint alleged, or has violated any order of said Commission as in said bill alleged. And in particular that no unjust or unlawful discrimination or rate as against any parties or places in said bill referred to, as alleged in said bill, is shown by said bill to have been at any time made by this defendant.

Wherefore, and for divers other causes of demurrer appearing on the said bill, this defendant doth demur thereto.

136 And it prays the judgment of this honorable court whether it shall be compelled to make any answer to the said bill, and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

By its solicitor.

SIGOURNEY BUTLER.

SIGOURNEY BUTLER, of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law, and is not interposed for delay.

SIGOURNEY BUTLER,
of Counsel for Defendant, The Concord & Montreal Railroad.

(Indorsed :) Filed, by order of court made Mch. 2, 1894, this March 2nd, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 124.

137 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COM- pany et als.	

FRIDAY, *February 16, 1894.*

This being the day fixed for the further hearing of this cause, now comes the Interstate Commerce Commission, the petitioner, by Henry D. Clayton, United States district attorney for the middle district of Alabama, and moves and prays the court for a decree pro confesso against each, respectively, of the defendants to the above-stated cause, who are in default, and have not filed their answer, demurrer, or plea as required by the order of the court heretofore made.

And it appearing that this court did, on the 20th day of January, 1894, authorize the Secretary of the Interstate Commerce Commission to make service of the petition and motion and order heretofore made on the same by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of said Interstate Commerce Commission, correctly addressed to the said defendants to said petition who are natural persons, or to the president or one of the vice-president or the secretary of each of the corporate defendants.

And it appearing to the court by the certificate of Edward A. Moseley, secretary of the Interstate Commerce Commission, duly authenticated under the seal of said Interstate Commerce Commission, that service was made on the 22nd day of January, 1894, as required by the said order of this court, upon the following-named defendants, to wit: The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia
138 Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Evansville & Terra Haute Railway Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The Maine Steamboat Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sa't Ste. Marie Railway Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The New York & New England Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lawber Welsh,

receivers thereof; The Providence and Springfield Railroad Company; The Cheshire Railroad Company, and The Concord and Montreal Railroad Company.

And it further appearing to the court that this court did by its said order dated January 20th, 1894, require each of said defendants, respectively, to file their answers to said petition on or before the 16th day of February, 1894.

And it is further made to appear to the court that each of said last above-named defendants have failed or refused to comply with said order of the court, and have failed or refused to file their answers before the 16th day of February, 1894, and that said last above-named defendants are in default.

139 It is therefore considered, ordered, and decreed by the court that the said petition be, and is, in all things, taken and held to be confessed by said defendants, and each of them, to wit: The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway, and Charles M. McGhee and Henry Fink, the receivers thereof; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Evansville & Terra Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sa't Ste. Marie Railway Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The New York & New England Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lawber Welsh, receivers thereof; The Providence & Springfield Railroad Company; The Cheshire Railroad Company, and the Concord & Montreal Railroad Company.

140 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.

} No. 158.

FRIDAY, *February* 16, 1894.

Comes the Alabama Midland Railway Company; the Savannah, Florida & Western Railway Company; the Louisville & Nashville Railroad Company; the Ocean Steamship Company of Savannah, and H. M.

Comer as receiver of Central Railroad & Banking Company of Georgia, and ask for further time in which to file their answers to the petition in the above-stated cause.

And now, on consideration of such application, it is ordered by the court that said application of said last named parties be granted, and they and each of them are hereby required to file their respective answers to said petition before Thursday, the first day of March, 1894.

141 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.	

MONDAY, *February* 19, 1894.

This cause having been set for further hearing on this day and coming on to be heard, Henry D. Clayton, United States attorney for the middle district of Alabama, makes known to the court that the cause is not ready for trial and moves and prays the court to set it down for hearing and trial on another day.

And thereupon it is considered, ordered, and decreed by the court that the above-stated cause be, and the same is hereby, set down for hearing and trial on Thursday, the first day of March, 1894.

142 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.		

FRIDAY, *March* 2, 1894.

Comes the parties by attorneys and the cause is submitted upon the plea of the Pennsylvania Railroad Company, demurrer of the Boston & Maine Railroad, demurrer of the Concord & Montreal Railroad, motion and plea of the Central Railroad & Banking Company of Georgia, motion and plea of the Kansas City, Ft. Scott & Memphis R. R. Co., motion and plea of the Kansas City, Memphis & Birmingham R. R. Co., and motion and plea of the Ocean Steamship Company. And it is ordered by the court that the determination of said pleas, motions, and demurrers be held for further consideration and for the decision of the court hereafter to be made; and this cause is continued for the further orders of the court.

143 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.		

FRIDAY, *May* 25, 1894.

This cause coming on to be heard this day on the demurrer heretofore interposed by the Boston & Maine Railroad Company, parties defendant

to this suit, upon consideration whereof it is ordered and adjudged that the grounds of said demurrer are not well taken, and are therefore overruled and denied at the costs of said defendants.

144 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	No. 158. In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY CO.,		
The Boston & Maine Railroad, The Concord & Montreal R. R., et als.		

MONDAY, July 16, 1894.

In open court this 16th day of July, 1894.

It appearing to the court that all of the defendants in the above-stated cause have been duly and legally served in said cause, and that the Boston & Maine Railroad and the Concord & Montreal Railroad have each failed to file its answer in the clerk's office of this court as required by the rules of practice in equity to the day hereof:

It is therefore, on motion of Geo. F. Moore, esq., assistant United States attorney, ordered and decreed that the bill herein be taken pro confesso as to said defendants The Boston & Maine Railroad and The Concord & Montreal Railroad, for want of answers.

145 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.	}

FRIDAY, January 22, 1895.

Upon motion of J. D. Roquemore, esq., it is ordered that the depositions taken in this case be published without prejudice to any of the parties in interest.

THE INTERSTATE COMMERCE COMMISSION	}
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET ALS.	}

FRIDAY, March 1, 1895.

This cause coming on further to be heard this day and was argued by counsel, after which the court gave counsel twenty days in which to file briefs.

146 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE-COMMISSION	}	No. 158. In equity.
vs.		
THE ALABAMA MIDLAND RAILWAY COMPANY et al.		

The separate answer of the Kansas City, Fort Scott & Memphis R. R. Co.

And now comes the defendant, The Kansas City, Fort Scott & Memphis R. R. Co., and reserving unto itself all and every exception which may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, and for answer thereto, or to so much thereof as this defendant is advised and believes to be material for it to make answer to, answers and says:

1. It admits that it is a corporation organized as averred in the bill of complaint, and having its principal place of business in Kansas City, Missouri.

2. It admits that it was heretofore impleaded in a controversy before the Interstate Commission upon the petition of the Board of Trade of Troy, Alabama, and that the several steps were taken, judgments rendered, and orders issued by the said Interstate Commission as are set out in the bill of complaint.

3. It denies that at the hearing of the Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act to regulate commerce in any respect in the matter which forms the subject of the controversy with the Board of Trade of Troy, Alabama, but that its acts and doings, which have been the subject of inquiry before the Interstate Commerce Commission, were in all respects lawful and valid. And this defendant denies that it has in any respect

147 brought itself within the jurisdiction of the said Interstate Commerce Commission by any violation of law or unlawful conduct.

4. This defendant charges that the order of the said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit AB, was an improper and unlawful order, and was not justified by the evidence which was taken before the said Interstate Commerce Commission, and denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time, or since then, guilty of any violation of the law as set forth in the said report and order of the Commission.

5. And for further answer this defendant adopts the allegations of its answer filed before the Interstate Commerce Commission and attached to the bill as Exhibit H.

And this defendant, having fully answered, prays to be hence dismissed with its reasonable costs in this behalf wrongfully sustained.

WALLACE PRATT & WM. A. WALKER,
Attys. for K. C., Ft. S. & M. R. R. Co.

148 (Indorsed :) Filed in clerk's office June 23, 1894. J. W. Dimmick, clerk. Recorded in book M. M., page 137.

149 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.

THE ALABAMA MIDLAND RAILWAY COM-
PANY et al.

No. 158. In equity.

The separate answer of the Kansas City, Memphis & Birmingham R. R. Co.

And now comes the defendant, The Kansas City, Memphis & Birmingham Railroad Co., and reserving unto itself all and every exception which may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, and for answer thereto, or to so much thereof as this defendant is advised and believes to be material for it to make answer to, answers and says:

1. It admits that it is a corporation organized as averred in the bill of complaint, and having its principal place of business in Kansas City, Missouri.

2. It admits that it was heretofore impleaded in a controversy before the Interstate Commerce Commission upon the petition of the Board of Trade of Troy, Alabama, and that the several steps were taken, judgments rendered, and orders issued by the said Interstate Commerce Commission as are set out in the bill of complaint.

3. It denies that at the hearing of the Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act to regulate commerce in any respect in the matter which forms the subject of the controversy with the Board of Trade of Troy, Alabama, but that its acts and doings which have been the subject of inquiry before the Interstate Commerce Commission were in all respects lawful and valid.

And this defendant denies that it has in any respect brought itself
150 within the jurisdiction of the said Interstate Commerce Commission by any violation of law or unlawful conduct.

4. This defendant charges that the order of the said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit AB, was an improper and unlawful order, and was not justified by the evidence which was taken before the said Interstate Commerce Commission; and denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time, or since then, guilty of any violation of the law as set forth in the said report and order of the Commission.

5. And for further answer this defendant adopts the allegations of its answer filed before the Interstate Commerce Commission and attached to the bill as Exhibit G.

And this defendant, having fully answered, prays to be hence dismissed with its reasonable costs in this behalf wrongfully sustained.

WALLACE PRATT & WM. A. WALKER,

Attys. for K. C., M. & B. R. R. Co.

151 (Indorsed :) Filed in clerk's office June 23rd, 1894. J. W. Dimmick, clerk. Recorded in M. M., page 138.

152 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE ALABAMA MIDLAND RAILWAY ET ALS. } No. 158. In equity.

The separate answer of the Central Railroad and Banking Company of Georgia.

And now comes the defendant, Ocean Steamship Company, and reserving unto itself all and every exception which may be had or taken to the many errors, imperfections, and uncertainties in said bill of complaint contained, and for answer thereto, or to so much thereof as it is advised and believes is material to be answered, answering says :

FIRST.

It admits that it is a corporation organized by and existing under the laws of the State of Georgia and having its principal place of business at Savannah in said State, and that H. M. Comer and R. Somers Hayes are the joint receivers thereof.

SECOND.

It admits that it was heretofore a party to a controversy before the Interstate Commerce Commission upon the petition of the Board of Trade of Troy, Alabama, and that the several steps were taken and orders issued by the said Interstate Commerce Commission as are set out in the bill of complaint.

THIRD.

It denies that at the hearing before the said Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act of Congress entitled "An act to regulate commerce" and the amendments thereof, in any respect ; but, on the contrary, shows
153 that it has not violated the said act to regulate commerce in the matter which forms the subject of controversy with said Board of Trade of Troy, Alabama, and that its acts and doings which have been the subject of inquiry before the said Interstate Commerce Commission were in all respects legal and valid. And this defendant denies that it has in any respect brought itself within the jurisdiction of said Interstate Commerce Commission by any violation of law, or by any unlawful conduct

FOURTH.

And this defendant avers and charges that the order of said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit AB, was an improper and unlawful order, and was not justified by the evidence which was taken before the said Interstate Commerce Commission on said hearing ; and further denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time, or since then, guilty of any violation of the law as set forth in said report and order of the said Commission.

FIFTH.

And for further answer to said bill this defendant adopts as its own and reaffirms the allegations of the answer filed before the said Interstate Commerce Commission in said cause by the Central Railroad & Banking Company of Georgia, and attached to the bill as Exhibit U, and makes the same a part of this answer.

And further answering, this defendant specifically denies that a greater rate of freight was or is charged upon goods shipped over its line to Troy than to Montgomery, Alabama, under substantially similar circumstances and conditions, and denies that any of the rates alleged to have been charged by this defendant as a part of a continuous line of transportation was in violation of the 4th section of said act to regulate commerce, for that the inhibition in said section is limited to cases in which the circumstances and conditions are substantially similar. On the contrary, this defend-
 154 ant avers that circumstances and conditions of the city of Montgomery are substantially dissimilar from those of the town of Troy in the matter of transportation facilities and of the competition of public carriers of freights, in this, that at the city of Montgomery there are seven competing railroads centering there, reaching out therefrom to all the markets of the country, North, South, East, and West, as well as forming connecting lines for transportation to foreign countries, and a river navigable at all seasons of the year, as is more fully hereinafter shown, while at the town of Troy there are only two railroads, as is more fully hereinafter shown; that the circumstances and conditions of the city of Montgomery are substantially dissimilar from those of the town of Troy in the matter of competition of market with market, in this, that the city of Montgomery is a large producing and consuming point, and furnishes extensive and unusual advantages to producers for the sale of their products and to consumers for the purchase of articles of consumption, as is more fully hereinafter shown, while the town of Troy is a small producing and consuming point and furnishes only limited and disadvantageous opportunities for the sale of the products of producers and for the purchase of articles of consumption by consumers, as is more fully hereinafter shown.

That the circumstances and conditions of the city of Montgomery are substantially dissimilar from those of the town of Troy, in the matter of the competition of carrier with carrier, and in the matter of the competition of market with market, as is hereinafter more fully shown.

155 And further answering, defendant specifically denies that a greater rate of freight was or is charged upon goods shipped over its line to Troy than to Eufaula or Columbus, Georgia, under substantially similar circumstances and conditions, and denies that any of the rates alleged to have been charged by this defendant as a part of a continuous line of transportation was in violation of the 4th section of said act to regulate commerce, for that the inhibition in said section is limited to cases in which the circumstances and conditions are substantially similar.

On the contrary, defendant avers that the circumstances and conditions of the cities of Eufaula and Columbus are substantially dissimilar from those of the town of Troy in the matter of transportation facilities, and of the competition of public carriers of freights, and in the matter of competition of market with market and of carrier with carrier.

In further answer to said bill this defendant avers and charges that the city of Montgomery, Alabama, is situated on the Alabama River, which is a navigable river; is the terminus of the Montgomery & Eufaula Railroad, the Alabama Midland Railroad, the Savannah, Americus & Montgomery Railroad, and is located on the through lines of the Louisville & Nashville Railroad & the Western Railway of Alabama. That the said Montgomery & Eufaula Railroad is a part of the system of this defendant, and is the connecting line between said city of Montgomery and the city of Macon, Georgia; the city of Savannah, Georgia; the city of Brunswick, Georgia; the city of Port Royal, South Carolina; the city of Charleston, South Carolina; the city of Norfolk, Virginia, & all Atlantic seaports & Eastern & Northern markets, and that it is the outlet to freights carried by it from Macon over divers roads, reaching the Northern, Southern, Eastern, and Western markets; that the said Alabama Midland Railway reaches from the city of Montgomery east and south and affords a competitive line to Brunswick and Savannah, Georgia, and the Eastern, Northern, and Southern markets; that the Savannah, Americus & Montgomery Railway has its western terminus at Montgomery and affords a competing line east to Columbus, Georgia; Americus, Georgia; Savannah and Brunswick, Georgia, and to the Northern, Eastern, Southern, and Western railroads and water transportation lines reaching said points; that the said Louisville & Nashville Railroad Company has lines of road reaching points north, east, and west from said city of Montgomery and south and southwest, touching the city of Pensacola, Florida; the city of Mobile, Alabama, and the city of New Orleans, Louisiana, on the Gulf of Mexico, and forming connecting

156 lines with those cities for the southeast, west, and north; that the said city of Montgomery is at the head of navigation of the Alabama River, and is thus afforded water competition with the railroads centering thereat to all of the markets on the Gulf and Atlantic coasts, and to the north & northwest, by way of the Mississippi River and its tributaries; that said Louisville & Nashville Railroad running north affords rail and water transportation over its lines and the Tennessee River, the Ohio River, and all of their navigable tributaries and outlets to points north, west & northwest, east & northeast; that the Western Railway of Alabama has a line from said city of Montgomery to the city of Atlanta, Georgia, where concenter many trunk lines of transportation to the north, south, east, and west; that it has a line from said city of Montgomery to the city of Selma, Alabama, and at Selma there are many lines of transportation which reach south to the Gulf of Mexico and west to the Mississippi River and north to navigable streams, and that said lines of railroad centering at Selma, Alabama, reach the Northern, Eastern, Western, and Southern markets. And defendant avers that the competition at said city of Montgomery is strong, vigilant, and vigorous, owing to the different lines of railroad reaching it and the transportation lines of the Alabama River, this competition reaching to all the markets of the country—north, east, south, and west, as well as to all foreign points; that said city of Montgomery and the surrounding country are benefitted by the competition among these various railroads and water transportation companies, and that the rates to and from Troy, and other

localities in essentially similar conditions as Troy, have been lowered by reason of this competition, and such rates are themselves fair and reasonable. The population of said city of Montgomery within its police jurisdiction is about forty thousand. The distance from Montgomery to the nearest coal and iron fields is about sixty miles, and from Troy about one hundred. The capital invested in manufacturing and industrial enterprises in Montgomery is about three million dollars, and the value of the manufactured products of said city is about forty million dollars.

The tonnage for the year ending March 1st, 1892, received by the various railroads at Montgomery proper was 18,829,877 pounds. Ton'age of Western and Southwestern freights received for this city and connections for said year was 647,880,688 pounds, or 21,596 carloads, and have been the same per annum since.

Said city of Montgomery is the capital of the State of Alabama, an historic city, and is visited annually by many thousands of people on business or pleasure; the business of the Alabama River was for the year 1891 52,349 bales of cotton carried by boats, and 44,500 tons of other freight. The value of the goods affreighted on the Alabama River for that year (1891) was \$8,175,650, and has been about the same annually since. Said city has three cotton factories, employing hands to the number of about twelve hundred, and consuming cotton to the amount of about eighteen hundred bales; it has, besides, forty-one manufacturing and industrial enterprises of various kinds, employing a total number of about twenty-seven hundred hands; the cotton receipt' thereat for the year 1891 amounted to about one hundred and sixty-five thousand bales, and the cotton compressed for that year was one hundred and fifty-six thousand three hundred and twenty-four bales, and such receipts and the amount of cotton compressed have been about the same annually ever since; that there are twenty-one wholesale firms who buy in the Western markets, and eleven whole-sale firms who buy in the Eastern markets; that said city receives trade from points in Alabama, Georgia, Florida, and Mississippi, and from many points outside of said State; that the Alabama River is navigable all the year round from Montgomery to Mobile, a distance of three hundred and sixty-seven miles, and there are upon said river three lines of steamers plying between Montgomery and Mobile, operating four steamboats.

And defendant avers that Troy is an inland town, fifty-two miles southeast of Montgomery and eighty-five miles southwest of Columbus, Georgia; that its population does not exceed four thousand, and that the cotton receipts at that point are on an average about thirty thousand bales per annum, and the value of its trade for any given year does not exceed three million dollars, and is almost, if not entirely, retail and local in its character. And that said city of Troy is reached only by the lines of the Alabama Midland Railway and the Mobile & Girard Railroad, which cross each other at said point, and that it has no water transportation of any kind.

SEVENTH.

And this defendant further answering said bill avers and charges that in said proceedings before the said Interstate Commerce Commission it was

not made to appear that the provisions of the act to regulate commerce have been violated by this defendant in the respects charged in the said petition before the said Commission, and that the matters in controversy have never been legally determined by said Commission, and that the said judgments, orders, and decrees of said Commission have no legal or binding effect upon this defendant or its codefendants.

And now this defendant, having fully answered said bill, prays to be dismissed with its reasonable costs in this behalf wrongfully expended.

ROQUEMORE & WHITE,

Solrs. for the Ocean Steamship Company.

159 (Indorsed :) No. 158. Interstate Com. Com. vs. Ala. Mid. Ry. Co. et al. Answer of the Ocean Steamship Co. Filed in clerk's office June 23, 1894. J. W. Dimmick, clerk. Recorded in M. M., page 131.

160 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY ET ALS.	

The separate answer of the Central Railroad and Banking Company of Georgia.

And now comes the defendant, The Central Railroad and Banking Company of Georgia, and reserving unto itself all and every exception which may be had or taken to the many errors, imperfections, and uncertainties in said bill of complaint contained, and for answer thereto, or to so much thereof as it is advised and believes is material to be answered, answering says:

FIRST.

It admits that it is a corporation organized by and existing under the laws of the State of Georgia, and having its principal place of business at Savannah in said State, and that H. M. Comer and R. Somers Hayes are the joint receivers thereof.

SECOND.

It admits that it was heretofore a party to a controversy before the Interstate Commerce Commission upon the petition of the Board of Trade of Troy, Alabama, and that the several steps were taken and orders issued by the said Interstate Commerce Commission as are set out in the bill of complaint.

THIRD.

It denies that at the hearing before the said Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act of Congress entitled "An act to regulate commerce" and the amendments thereof, in any respect; but on the contrary shows
161 that it has not violated the said act to regulate commerce in the matter which forms the subject of controversy with said Board of

Trade of Troy, Alabama, and that its acts and doings, which have been the subject of inquiry before the said Interstate Commerce Commission, were in all respects legal and valid. And this defendant denies that it has in any respect brought itself within the jurisdiction of said Interstate Commerce Commission by any violation of law, or by any unlawful conduct.

FOURTH.

And this defendant avers and charges that the order of said Interstate Commerce Commission, which is set out and attached to the bill as Exhibit AB, was an improper and unlawful order and was not justified by the evidence which was taken before the said Interstate Commerce Commission on said hearing; and further denies that this defendant in any respect either was on the 28th day of August, 1893, or prior to that time, or since then, guilty of any violation of the law as set forth in said report and order of the said Commission.

FIFTH.

And for further answer to said bill this defendant adopts and reaffirms the allegations of its answer filed before the said Interstate Commerce Commission in said cause, and attached to the bill as Exhibit U, and makes the same a part of this answer.

And further answering, this defendant specifically denies that a greater rate of freight was charged upon goods shipped to Troy than to Montgomery, Alabama, under substantially similar circumstances and conditions, and denies that any of the rates alleged to have been charged by this defendant as a part of a continuous line of transportation was in violation of the 4th section of said act to regulate commerce, for that the inhibition in said section is limited to cases in which the circumstances and conditions are substantially similar. On the contrary, this defendant avers that circumstances and conditions of the city of Montgomery are substantially dissimilar from those of the town of Troy in the matter of transportation facilities and of the competition of public carriers of freights, in this, that at the city of Montgomery there are seven competing railroads centering there, reaching out therefrom to all the markets of the country, North, South, East, and West, as well as forming connecting lines for transportation to foreign countries, and a river, navigable at all seasons of the year, as is more fully hereinafter shown, while at the town of Troy there are only two railroads, as is more fully herein-after shown; that the circumstances and conditions of the city of Montgomery are substantially dissimilar from those of the town of Troy in the matter of competition of market with market, in this, that the city of Montgomery is a large producing and consuming point, and furnishes extensive and unusual advantages to producers for the sale of their products and to consumers for the purchase of articles of consumption, as is more fully hereinafter shown, while the town of Troy is a small producing and consuming point, and furnishes only limited and disadvantageous opportunities for the sale of the products of producers, and for the purchase of articles of consumption by consumers, as is more fully hereinafter shown; that the circumstances and conditions of the city of Montgomery

are substantially dissimilar from those of the town of Troy in the matter of the competition of carrier with carrier, and in the matter of the competition of market with market, as is hereinafter more fully shown.

163 And further answering, defendant specifically denies that a greater rate of freight was or is charged upon goods shipped over its line to Troy than to Eufaula or Columbus, Georgia, under substantially similar circumstances and conditions, and denies that any of the rates alleged to have been charged by this defendant as a part of a continuous line of transportation was in violation of the 4th section of said act to regulate commerce, for that the inhibition in said section is limited to cases in which the circumstances and conditions are substantially similar.

On the contrary, defendant avers that the circumstances and conditions of the cities of Eufaula and Columbus are substantially dissimilar from those of the town of Troy in the matter of transportation facilities, and of the competition of public carriers of freights, and in the matter of competition of market with market and of carrier with carrier.

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SIXTH.

In further answer to said bill, this defendant avers and charges that the city of Montgomery, Alabama, is situated on the Alabama River, which is a navigable river; is the terminus of the Montgomery & Eufaula Railroad, the Alabama Midland Railroad, the Savannah, Americus & Montgomery Railroad, and is located on the through lines of the Louisville & Nashville Railroad, & the Western Railway of Alabama; that the said Montgomery & Eufaula Railroad is a part of the system of this defendant, and is the connecting line between said city of Montgomery and the city of Macon, Georgia; the city of Savannah, Georgia; the city of Brunswick, Georgia; the city of Port Royal, South Carolina; the city of Charleston, South Carolina; the city of Norfolk, Virginia, and all Atlantic seaports & Eastern & Northern markets, and that it is the outlet to freights carried by it from Macon over divers roads, reaching the Northern, Southern, Eastern, and Western markets; that the said Alabama Midland Railway reaches from the city of Montgomery east and south, and affords a competitive line to Brunswick and Savannah, Georgia, and the Eastern, Northern, and Southern markets; that the Savannah, Americus & Montgomery Railway has its western terminus at Montgomery, and affords a competing line east to Columbus, Georgia, Americus, Georgia, Savannah and Brunswick, Georgia, and to the Northern, Eastern, Southern, and Western railroads and water transportation lines reaching said points; that the said Louisville & Nashville Railroad Company has lines of road reaching points north, east, and west from said city of Montgomery and south and southwest, touching the city of Pensacola, Florida, the city of Mobile, Alabama, and the city of New Orleans, Louisiana, on the Gulf of Mexico, and forming connecting lines with those cities for the Southeast, West, and North; that the said city of Montgomery is at the head of navigation of the Alabama River, and is thus afforded water competition with the railroads centering thereat to all the markets on the Gulf and Atlantic coasts, and to the North and Northwest by way of the Mississippi River and its tributaries; that said Louisville & Nashville Railroad running north affords rail and water

transportation over its lines and the Tennessee River, the Ohio River, and all of their navigable tributaries and outlets to points north, west, north-west, east, and northeast. That the Western Railway of Alabama has a line from said city of Montgomery to the city of Atlanta, Georgia, where concenter many trunk lines of transportation to the North, South, East, and West; that it has a line from said city of Montgomery to the city of Selma, Alabama, and at Selma there are many lines of transportation which reach south to the Gulf of Mexico and west to the Mississippi River and north to navigable streams, and that said lines of railroad concentering at Selma, Alabama, reach the Northern, Eastern, Western, and Southern markets, And defendant avers that the competition at said city of Montgomery is strong, vigilant, and vigorous owing to the different lines of railroads reaching it and the transportation lines of the Alabama River, this competition reaching to all the markets of the country—North, East, South, and West, as well as to all foreign points. That said city of Montgomery, and the surrounding country are benefitted by the competition among these various railroads and water transportation companies, and that the rates to and from Troy and other localities in essentially similar conditions as Troy, have been lowered by reason of this competition, and such rates are themselves fair and reasonable. The population of said city of Montgomery within its police jurisdiction is about forty thousand. The distance from Montgomery to the nearest coal and iron fields is about sixty miles, and from Troy about one hundred. The capital invested in manufacturing and industrial enterprises in Montgomery is about three million dollars, and the value of the manufactured products of said city is about forty million dollars.

The tonnage for the year ending March 1st, 1892, received by the various railroads at Montgomery proper was 18,829,877 pounds. Tonnage of Western and Southwestern freights received for this city and connections for said year was 647,880,688 pounds, or 21,596 carloads, and have been the same per annum since.

Said city of Montgomery is the capital of the State of Alabama, an historic city, and is visited annually by many thousands of people on business or pleasure; the business of the Alabama River was, for the year 1891, 52,349 bales of cotton, carried by boats, and 44,500 tons of other freight. The value of the goods affreighted on the Alabama River for that year (1891) was \$8,175,650, and has been about the same annually since. Said city has three cotton factories, employing hands to the number of about twelve hundred, and consuming cotton to the amount of about eighteen hundred bales; it has besides forty-one manufacturing and industrial enterprises of various kinds, employing a total number of about twenty-seven hundred hands; the cotton receipts thereat for the year 1891 amounted to about one hundred and sixty-five thousand bales, and the cotton compressed for that year was one hundred and fifty-six thousand three hundred and twenty-four bales, and such receipts, and the amount of cotton compressed, have been about the same annually ever since; that there are twenty-one wholesale firms who buy in the Western markets, and eleven wholesale firms who buy in the Eastern markets; that said city receives trade from points in Alabama, Georgia, Florida, and Mississippi, and from many points outside of said States; that the Alabama River is navigable all the year round from Montgomery to Mobile, a distance of

three hundred and sixty-seven miles, and there are upon said river
 166 three lines of steamers plying between Montgomery and Mobile,
 operating four steamboats.

And defendant avers that Troy is an inland town, fifty-two miles south-
 east of Montgomery and eighty-five miles southwest of Columbus,
 Georgia; that its population does not exceed four thousand, and that the
 cotton receipts at that point are on an average about thirty thousand bales
 per annum, and the value of its trade for any given year does not exceed
 three million dollars, and is almost, if not entirely, retail and local in its
 character; and that said city of Troy is reached only by the lines of the
 Alabama Midland Railway and the Mobile & Girard Railroad, which
 cross each other at said point, and that it has no water transportation of
 any kind.

SEVENTH.

And this defendant further answering said bill, avers and charges that
 in said proceedings before the said Interstate Commerce Commission it
 was not made to appear that the provisions of the act to regulate com-
 merce have been violated by this defendant in the respects charged in the
 said petition before the said Commission, and that the matters in contro-
 versy have never been legally determined by said Commission, and that
 the said judgments, orders and decrees of said Commission have no legal
 or binding effect upon this defendant or its co-defendants.

And now this defendant, having fully answered said bill, prays to be
 dismissed with its reasonable costs in this behalf wrongfully expended.

ROQUEMORE & WHITE,

*Solicitors for the Central Railroad and Banking Company
 of Georgia, & H. M. Comer & R. Somers Hayes, Receivers.*

167 (Indorsed :) Filed in clerk's office June 23, 1894. J. W. Dim-
 mick, clerk. Recorded in M. M., page 126. Roquemore &
 White.

168 In the circuit court of the United States for the middle district of
 Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY and others.	

And now comes the petitioner, by Henry D. Clayton, United States
 attorney for the middle district of Alabama, and moves the court for an
 order fixing the time within which the defendants to the above-stated
 cause, who are not in default, shall be required to file their interrogatories
 to such witnesses as they wish to examine in behalf of the defendants in
 said cause.

Now, on consideration, it is ordered and decreed by the court that the
 said defendants be and they are hereby required to file such interrogatories
 to such witnesses as they desire to be examined in behalf of the defend-
 ants in said cause on or before the 15th day of August, 1894.

And it is further ordered and decreed by the court that the petitioner, The Interstate Commerce Commission, will cross said interrogatories within fifteen (15) days from the 15th day of August, 1894.

And it is further ordered and decreed that said Commission, the petitioner in this case, may file interrogatories to such witnesses as it may desire to examine, within fifteen (15) days after the 15th day of August, 1894; and the defendants are allowed ten (10) days after they have been filed to cross said interrogatories filed by said petitioner.

Done in term time this the 25th day of July, 1894.

JOHN BRUCE, *Judge*.

(Indorsed :) No. 158. U. S. circuit court mid. dist. of Ala. Interstate Commerce Commission vs. Alabama Midland Railway Co. et als. Order relative to filing interrogatories, &c. Filed the 25th day of July, 1894. J. W. Dimmick, clerk. Recorded in M. M., page 139.

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UNITED STATES OF AMERICA.

Circuit court for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

Plea and answer of the Concord and Montreal Railroad, one of the defendants named in said bill.

And now comes the said Concord and Montreal Railroad especially appearing for this purpose and makes its plea to the aforesaid bill of complaint of the said plaintiff as follows:

The said Concord and Montreal Railroad by protestation, not confessing or acknowledging all or any part of the matters or things in the said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, does plead thereto and for plea says:

First. That this defendant is not properly or rightfully within the jurisdiction of this honorable court, no legal or proper service having been made in this suit upon the said defendant, the said defendant being a corporation created by the laws of the State of New Hampshire and having no existence in the said State of Alabama and never having been duly served with process of this suit.

170 Second. That the defendant is not properly joined as defendant in this suit in that it appears by said bill that the defendant, said Concord and Montreal Railroad, has no interest in the controversy set forth in said bill.

All which matters and things the said defendant avers to be true and pleads the same to the said bill and humbly craves the judgment of this honorable court whether it ought to be compelled to make any further or other answer to the said bill.

And further the said Concord and Montreal Railroad (without waiving any of the defences heretofore set out), if required to make answer to said bill, answers as follows:

1. It admits that it is a corporation created, chartered, and existing under and by virtue of the laws of the State of New Hampshire, and

having its principal office at Concord, in the said State of New Hampshire, and that it is and has been for many years past a common carrier engaged in the transportation of persons and property over the lines of its railroad situated within the States of Massachusetts and New Hampshire, and not elsewhere.

2. It admits that as such common carrier it is engaged in interstate commerce and is subject to the provisions of the act entitled "An act to regulate commerce" and the amendments thereto, referred to in said bill of complaint.

3. It admits that it was on the 29th day of June, 1892, duly
171 implied in a controversy before the Interstate Commerce Commission upon the complaint of a petitioner styling itself The Board of Trade of Troy, Ala., for an alleged violation on the part of the defendants named in said complaint of the provisions of the said act entitled "An act to regulate commerce."

4. It admits that thereafter, to wit, on the 24th day of August, 1892, it filed its answer to said complaint in the office of the Interstate Commerce Commission.

5. It admits that at some time during the fall of the year 1893 it received what purported to be a properly authenticated copy of the report of said Commission in respect to the matters at issue before said Commission in the said complaint of said Board of Trade of Troy, Ala., together with an order and notice thereon of said Commission.

6. It avers that in common with other common carriers either by rail or by water north of what are known as the Southern gateways, such, for example, as Hagerstown, in the State of Maryland, and Alexandria, in the State of Virginia, it publishes through rates or arbitraries from points on its line to said Southern gateways upon various classes of freight destined to various points in the Southern States south of the aforesaid gateways, the said rates, so far as transportation over the lines of your defendant is concerned, being the same over its line from the point of shipment on its line to the point where the freight leaves your defendant's

line and enters upon its transit over the line of the railroad which
172 takes it from your defendant, irrespective of the point south of the said gateways to which said freight is destined; that these rates on your defendant's line, which are made a part of the through rate on freight from points on your defendant's line to other points on your defendant's line and thence by said other carriers to said gateways and destined to points in the Southern States south of the said gateways are and have been at all times the same for transportation over your defendant's line and do not depend in any way upon the point of destination, the route of carriage, the rates of freight, or any other condition or circumstances south of the said gateways. Your defendant therefore denies that it has at any time heretofore discriminated or is now discriminating in favor of or against any point south of the said gateways, including Troy, in the State of Alabama, aforesaid, and it particularly denies having discriminated against the Board of Trade of Troy, Ala., or against Troy, Alabama, in favor of any other individual, corporation, or place.

7. It avers that all rates or charges that it quotes or receives or has quoted or received for shipment of through freight from any point upon its line to the point alleged in the petition aforesaid are the same as those

which it quotes or receives or has quoted or received for the transportation of the same classes of through freight to other points beyond its line and south of the said gateways from the same point of shipment to the point upon its line where the transportation ends.

8. Your defendant denies that it is or has been engaged with any
173 or all of the other defendants in said bill named under a common control, management, or arrangement for continuous carriage or shipment through several of the United States in the business of transportation of persons and property from Troy, in the State of Alabama aforesaid, thence through several intermediate States to divers points and places within the United States situated without the State of Alabama.

9. It denies that it has in any manner discriminated against the said Board of Trade of Troy, Alabama, or against said Troy, in the State of Alabama aforesaid, or that it has charged or is charging any rates as against said Board of Trade or against said Troy, in the State of Alabama, which are unjust or can be made subject to the revision, order, or decree of the said Interstate Commerce Commission.

10. It denies that it has made any charges or collections on any class of goods bringing it within the order of said Commission as in the last paragraph of the decision of said Commission set forth.

11. It denies that it is charging and collecting or has charged and collected on classed goods to Troy, in the said State of Alabama, a higher rate than is charged or collected on such shipments to Montgomery, in the State of Alabama.

12. It renews the defenses heretofore offered by its demurrer to the said bill of complaint, and it constitutes the said demurrer a part of this answer, and referring to the said demurrer incorporates the same into this
174 answer as fully and specifically as though it were herein repeated and set forth.

13. That except as hereinbefore stated your defendant is ignorant of any of the matters or things set out in said bill of complaint and hereby denies each and every other allegation and statement in said bill of complaint contained as fully and particularly as though the same were herein specifically repeated and set out and each in turn explicitly denied.

THE CONCORD & MONTREAL RAILROAD,
By DANIELS C. PRESCOTT,
its General Superintendent & Traffic Manager.
SIGOURNEY BUTLER, *of Counsel.*

175 I hereby certify that the foregoing plea is, in my opinion, well founded in point of law.
Boston, August 25, 1894.

SIGOURNEY BUTLER,
of Counsel for Defendant.

CONCORD, August 25, 1894.

STATE OF NEW HAMPSHIRE, *Merrimack, ss:*

Daniels C. Prescott, being duly sworn, deposes and says: I am the general superintendent and traffic manager of the said defendant, The Concord and Montreal Railroad. The foregoing plea and answer are true in

point of fact to the best of my own knowledge, and the foregoing plea is not interposed for delay.

DANIELS C. PRESCOTT.

Sworn to before me this twenty-fifth day of August, 1894.

[SEAL.]

FREMONT E. SHURTLEFF,

U. S. Commissioner, District of New Hampshire.

176 (Indorsed :) Filed the 31st day of August, 1894. J. W. Dimick, clerk. Recorded in M. M., page 140.

177 UNITED STATES OF AMERICA.

Circuit court for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
vs.	
ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

Plea and answer of the Boston & Maine Railroad, one of the defendants named in said bill.

And now comes the said Boston & Maine Railroad especially appearing for this purpose and makes its plea to the aforesaid bill of complaint of the said plaintiff as follows:

The said Boston & Maine Railroad by protestation, not confessing or acknowledging all or any part of the matters or things in the said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, does plead thereto and for plea says:

First. That this defendant is not properly or rightfully within the jurisdiction of this honorable court, no legal or proper service having been made in this suit upon the said defendant, the said defendant being a corporation created by the laws of the States of Massachusetts, Maine, and New Hampshire, and having no existence in the said State of Alabama and never having been duly served with process of this suit.

Second. That the defendant is improperly joined a defendant in
178 this suit in that it appears by said bill that the defendant said Boston & Maine Railroad has no interest in the controversy set forth in said bill.

All which matters and things the said defendant avers to be true and pleads the same to the said bill and humbly craves the judgment of this honorable court whether it ought to be compelled to make any further or other answer to the said bill.

And further the said Boston & Maine Railroad (without waiving any of the defences heretofore set out), if required to make answer to said bill, answers as follows:

1. It admits that it is a corporation created, chartered, and existing under and by virtue of the laws of the States of Massachusetts, New Hampshire, and Maine, and having its principal office at Boston, in the said State of Massachusetts, and that it is and has been for many years past a common carrier engaged in the transportation of persons and prop-

erty over the lines of its railroad, situated within the States of Massachusetts, New Hampshire, Maine, and Vermont, and not elsewhere.

2. It admits that as such common carrier it is engaged in interstate commerce and is subject to the provisions of the act entitled "An act to regulate commerce" and the amendments thereto, referred to in said bill of complaint.

3. It admits that it was on the 29th day of June, 1892, duly impleaded in a controversy before the Interstate Commerce Commission upon the complaint of a petitioner styling itself The Board of Trade of Troy, Ala., for an alleged violation on the part of the defendants named in said complaint of the provisions of the said act entitled "An act to regulate commerce."

179 4. It admits that thereafterwards, to wit, on the 23rd day of July, 1892, it filed its answer to said complaint in the office of the Interstate Commerce Commission.

5. It admits that at some time during the fall of the year 1893 it received what purported to be a properly authenticated copy of the report of said Commission in respect to the matters at issue before said Commission in the said complaint of said Board of Trade of Troy, Ala., together with an order and notice thereon of said Commission.

6. It avers that in common with other common carriers either by rail or by water north of what are known as the Southern Gateways, such, for example, as Hagerstown, in the State of Maryland, and Alexandria, in the State of Virginia, it publishes through rates or arbitraries from points on its line to said Southern Gateways upon various classes of freight destined to various points in the Southern States south of the aforesaid gateways, the said rates, so far as transportation over the lines of your defendant is concerned, being the same over its line from the point of shipment on its line to the point where the freight leaves your defendant's line and enters upon its transit over the line of the railroad which takes it from your defendant, irrespective of the point south of the said gateways to which said freight is destined; that these rates on your defendant's line, which are made a part of the through rate on freight from points on your defendant's line to other points on your defendant's line and thence, by said other carriers to said gateways and destined to points in the Southern States south of the said gateways, are and have been at all times the same

180 for transportation over your defendant's line, and do not depend in any way upon the point of destination, the route of carriage, the rates of freight, or any other condition or circumstances south of the said gateways. Your defendant therefore denies that it has at any time heretofore discriminated or is now discriminating in favor of or against any point south of the said gateways, including Troy, in the State of Alabama aforesaid, and it particularly denies having discriminated against the Board of Trade of Troy, Ala., or against Troy, Alabama, in favor of any other individual corporation or place.

7. It avers that all rates or charges that it quotes or receives, or has quoted or received, for shipments of through freight from any point upon its line to the points alleged in the petition aforesaid, are the same as those which it quotes or receives or has quoted or received for the transportation of the same classes of through freight to other points beyond its line and south of the said gateways from the same point of shipment to the point upon its line where the transportation ends.

8. Your defendant denies that it is or has been engaged with any or all of the other defendants in said bill named under a common control, management, or arrangement for continuous carriage or shipment through several of the United States in the business of transportation of persons and property from Troy, in the State of Alabama aforesaid, thence through several intermediate States to divers points and places within the United States situated without the State of Alabama.

9. It denies that it has in any manner discriminated against the said Board of Trade of Troy, Alabama, or against said Troy, in the
181 State of Alabama aforesaid, or that it has charged or is charging any rates as against said Board of Trade or against said Troy, in the State of Alabama, which are unjust or can be made subject to the revision, order, or decree of the said Interstate Commerce Commission.

10. It denies that it has made any charges or collections on any class of goods bringing it within the orders of said Commission as in the last paragraph of the decision of said Commission set forth.

11. It denies that it is charging and collecting, or has charged and collected, on classed goods to Troy, in the said State of Alabama, a higher rate than is charged or collected on such shipments to Montgomery, in the State of Alabama.

12. It renews the defenses heretofore offered by its demurrer to the said bill of complaint, and it constitutes the said demurrer a part of this answer, and referring to the said demurrer incorporates the same into this answer as fully and specifically as though it were herein repeated and set forth.

13. That except as hereinbefore stated your defendant is ignorant of any of the matters or things set out in said bill of complaint, and hereby denies each and every other allegation and statement in said bill of complaint as fully and particularly as though the same were herein specifically repeated and set out and each in turn explicitly denied.

BOSTON & MAINE RAILROAD,
By WILLIAM F. BERRY, *General Traffic Manager.*
& by SIGOURNEY BUTLER, *Its Solicitor.*

SIGOURNEY BUTLER, *Of Counsel.*

182 I hereby certify that the foregoing plea is, in my opinion, well founded in point of law.

Boston, August 20th, 1894.

SIGOURNEY BUTLER,
Of Counsel for Defendant.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss :

William F. Berry, being duly sworn, deposes and says, I am the general traffic manager of the said defendant Boston & Maine Railroad; the foregoing plea and answer are true in point of fact to the best of my own knowledge, and the foregoing plea is not interposed for delay.

WILLIAM F. BERRY.

Sworn to before me this twentieth day of August, 1894.

[SEAL.]

C. E. A. BARTLETT,
Notary Public.

183 (Indorsed:) This may be filed late. , U. S. attorney.
Filed the 31st day of August, 1894. J. W. Dimmick, clerk.
Recorded in M. M., page 143.

184 In the circuit court of the United States in and for the middle
dist. of Alabama.

INTERSTATE COMMERCE COM'N }
vs. } No. 158.
ALABAMA MID. RY. CO. ET AL. }

Come the parties in the above-entitled cause, by their attorneys, & move
to have said cause set for hearing on Tuesday, February 26, 1895.

And said cause is hereby set down for hearing on said Tuesday, Feb-
ruary 26, 1895, at the hour of 11 a. m., in the court room of said circuit
court, in the city of Montgomery, Alabama.

Signed in term time, in open court, January 21, 1895.

ALECK BOARMAN,
Judge, Presiding.

(Indorsed:) No. 158. Interstate Com. Com'n vs. Alabama Mid. Ry.
Co. et al. In U. S. C. C., Mid. D. of Ala. Order setting case for hearing
on Feb'y 26, 1895. Filed Jan'y 21, 1895. J. W. Dimmick, clerk.

185 In the circuit court of the United States for the middle dist. of
Alabama.

THE INTERSTATE COMMERCE COMMISSION }
vs. } No.
ALABAMA MIDLAND RAILWAY CO. ET ALS. }

Note of submission.

This cause, coming on to be heard by the said circuit court of the United
States on this the 26th day of February, A. D. 1895, is submitted for
judgment, decree, and order of the court.

The petitioner, or complainant, The Interstate Commerce Commission,
offers and submits upon the following:

1. The pleadings and proof on file in the case.
2. The bill, or petition, and exhibits thereto.
3. The decrees pro confesso against certain of the defendants, as shown
by the record in this cause.

4. The depositions of E. H. Bashinsky, Oliver C. Wiley, Charles Hen-
derson, Charles B. Goldthwaite, H. B. Cowart, J. B. Coreoran, L. M.
Bashinsky, J. W. Nall, B. M. Talbott, Joel D. Murphree, J. E. Hender-
son, J. E. Grady.

5. The testimony and exhibits and all the evidence taken by and used
before the Interstate Commerce Commission when this controversy was
pending before said Commission.

6. The judgment and order made in this matter by the Interstate Com-
merce Commission.

186 And the defendants offer and submit upon the following :

1. The pleadings and proof on file in the case, except the testimony taken by and used before the Interstate Commerce Commission when this matter was pending before such Commission ; to which testimony the defendants object.

2. The answers of the defendants to the bill, or petition, and exhibits thereto.

3. The depositions of Geo. H. Dent, A. Berringer, J. W. Tullis, J. G. Guice, W. R. Moore, J. Joseph, Theo. Welch, Lee McLendon, W. J. Haylow, Bradford Dunham, Leslie Gilbert, Jacob Griel, W. F. Vandiver, T. H. Moore, J. H. Clisby, W. F. Shellman, R. Q. Edmondson, Geo. C. McCormick, John O. Martin, E. B. Joseph, and A. M. Baldwin.

I, J. W. Dimmick, clerk of said court, do hereby certify that the above and foregoing is the note of submission made in the foregoing case this the 26th day of February, A. D. 1895.

J. W. DIMMICK, *Clerk*.

(Indorsed :) No. 158. Circuit court of the United States for mid. dist. of Ala. Interstate Com. Com. vs. Ala. Mid. R.R. Co. et al. Note of testimony. Filed this 26th day of February, A. D. 1895. J. W. Dimmick, clerk.

187 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY et als.	

Opinion of the court.

The complaint of the Board of Trade of Troy, Alabama, against the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections is that there is in the rates charged for transportation of property by the railroad companies mentioned and their connecting railroads a discrimination against the town of Troy, in violation of the terms and provisions of the interstate-commerce act of Congress of 1887.

It is specified that the Alabama Midland and the Georgia Central and their connecting roads discriminate against Troy and in favor of Montgomery in charging and collecting \$3.22 per ton on phosphate rock shipped from the South Carolina and Florida fields to Troy, and only \$3.00 per ton on such shipments to Montgomery, the longer-distance point ; and that the rock carried from such fields to Montgomery is hauled through Troy, so that the shorter distance is included in the longer distance.

To the same purport is the next specification, which is as to cotton, viz : That the rates on cotton established by said two roads and their connections on shipments to the Atlantic seaports Brunswick, Savannah, and Charleston, unjustly discriminate against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy to points east is 47

cents; that the rate from Montgomery to same points east, the
 188 longer-distance point, is only 40 cents; and that such shipments
 from Montgomery over the road of the Alabama Midland pass
 through Troy.

Specification 4 is, that the Alabama Midland, and the defendant carriers
 connecting and forming lines with it from Baltimore, New York, and the
 East, to Troy, and Montgomery, charge and collect a higher rate on ship-
 ments of class goods from those cities to Troy, than on such shipments,
 through Troy to Montgomery; the latter being the longer distance point
 by 52 miles.

Again, that the rates on class goods from Western and Northwestern
 points, established by the defendants forming lines from those points to
 Troy (stating it as the complainants do), are relatively unjust, and dis-
 criminating, as against Troy, when compared with the rates on such lines
 to Montgomery and Columbus.

That Troy is unjustly discriminated against in being charged on ship-
 ments of cotton, via Montgomery, to New Orleans the full local rate to
 Montgomery, by both the Alabama Midland and the Georgia Central.
 There are other specifications; but these are deemed sufficient for the con-
 sideration of the questions in the cause.

These specifications bring under consideration what is known as the
 long and short haul clause, as well as other clauses of the act; and the
 claim and argument is, that the difference in the charge for the transpor-
 tation of property from points east or west to Montgomery and Troy is
 discrimination against Troy, and in violation of section 4 of the act, which
 provides: "That it shall be unlawful for any common carrier subject to
 the provisions of this act to charge or receive any greater compensation in
 the aggregate for the transportation of pas-engers or of like kind of
 189 property, under substantially similar circumstances and conditions,
 for a shorter than for a longer distance over the same line, in the
 same direction, the shorter being included in the longer distance."

It may be conceded that the defendant railroad companies, the Midland
 and the Georgia Central, in cases of the transportation of property from
 Eastern points, through Troy to Montgomery, or from Montgomery to
 points east as claimed, fall within the specification of the complaint, and
 bring the case within the inhibition of the 4th section just quoted, if the
 charge for transportation is made "under substantially similar circum-
 stances and conditions" for the shorter as for the longer distance.

In the case of transportation of property from Eastern or Northeastern
 points (New York, Philadelphia, Baltimore, &c.), whether it is all rail or
 by water to Savannah and then by rail to Montgomery, through Troy, on
 the Midland, or from Northwestern points (such as Cincinnati, Louisville,
 St. Louis, &c.), through Montgomery to Troy, there is what may be called
 a long haul; and for this haul there are competing lines all rail, or all
 water in some cases, or part by rail and part by water; and this gives rise
 to through rates, and through rates give rise to "basing points," or
 "trade centers," which, in the very nature of things, are determined by
 questions of competition between lines engaged in and seeking a share in
 the carrying trade of the country.

Water transportation is doubtless a large factor in the determination of
 these "basing points;" other considerations may enter into the matter;

but the real source of it must chiefly be found in the competition between our great lines of transportation, reaching out as they do for a share in the commerce of the country and, as a general rule, cheapening the necessities of life brought to every man's door.

190 Doubtless there may be cases where these "basing points," or "trade centers" are fixed and determined arbitrarily, and where the motive for it may be a purpose to build up one locality at the expense of another, in violation of the spirit and provisions of the act of Congress; but is that the case we are dealing with here? It is common knowledge, it is history, that Montgomery was a distributing point before the railroad system was known and when there were no trunk lines of railroad, such as we now have, competing for a share of her business.

Troy is a city of about 4,000 or 5,000 population, with two railroads, one of which has been but recently constructed. It is not a large distributing point, and it is not on any navigable water course. The complaint would almost seem to be that the railroad companies had not made her a "basing point;" and that Montgomery, west of her on the Alabama River, and Columbus, east of her on the Chattahoochee River, being "basing points," this operated to her prejudice as a business point—which it no doubt does—and this is perhaps her real cause of complaint.

But the question is, Has the act of Congress been violated, and what is meant by the words, "under similar circumstances and conditions"? These words are first used in the statute in sect. 2, which provides, "That if any common carrier subject to the provisions of this act shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar

191 circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful." This section of the statute is directed against special rates, rebates, drawbacks, or other devices, and has no application, directly at least, to the case at bar; but it shows the care and caution of the Congress when it was dealing with such objectionable devices, calculated to favor particular persons or localities, and which might put almost every merchant or business locality at the mercy of corrupt management of the transportation lines. It may be that the caution used in framing the statute is on account of the inherent difficulty there is in the establishment of rules to govern all cases; and the courts are left to say what are "substantially similar circumstances and conditions" in any given case.

Neither the Congress in making the law, nor the courts in construing the law, can fail to note the element of competition as it enters into the industrial life of the people; and, perhaps, in no department is it more important and controlling than in the carrying trade of the country. It could not have been the purpose of Congress to ignore, or even to regard with disfavor, the competing forces and interests which, in many cases, result in so much benefit to so many classes of the people. It has long

since passed into a trite saying, that "competition is the life of trade," and in the presence of competing lines of transportation from and to different points, the courts must see that the circumstances and conditions are not the same as in cases where there are no questions of competing lines and reduced rates of transportation between different and distant points to be considered.

In the case at bar there are questions of competing lines, and the proposition of the complainant is, that notwithstanding this, the circumstances and conditions are substantially the same, and that it is in violation of the 4th section of the statute to charge more for the short haul to Troy, the shorter distance, than to Montgomery, the longer distance point. This argument proceeds upon the view that distance is the controlling factor on a question of rate for transportation of property, and yet these other matters may be, and often are, more controlling than even distance itself. The long-haul rate as a rule is favorable to shippers, and for an obvious reason. It involves less handling of the property transported, and rates per ton per mile for long hauls may be, and often are, inadequate for the shorter hauls. The purpose of Congress could not have been to disregard this distinction, which is well understood and accepted in questions of transportation.

It may be observed that the 3rd section of the act does not contain the words "under substantially similar circumstances and conditions," and declares it to be unlawful to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject "any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The words "any undue or unreasonable preference or advantage" plainly imply that every preference or advantage is not condemned, but such only as are undue or unreasonable.

In cases where there are no questions of through rates to "basing points" or "trade centers" it might not be difficult to apply the law to what might clearly appear to be unjust and unreasonable preference and advantage, and so leave a wide field for the operation of the statute.

The evidence shows that in cases of transportation of property from Northwestern points (such as St. Louis, Cincinnati, or Louisville) to Troy, Alabama, the shipments come to Montgomery, and from there to Troy; that the rate is so much from such shipping points to Montgomery; that the Alabama Midland Railroad charges what is called the local rate from Montgomery to Troy; and this is complained of. The Troy parties claim that they shall not only have the advantage of the reduced rates between the shipping points and Montgomery, but that they are entitled to such reduced rates from Montgomery to Troy. The same thing is claimed on cotton shipped from Troy to New Orleans via Montgomery, which is a combination of a through rate to New Orleans from Montgomery plus the local rate from Troy to Montgomery.

The evidence shows that such a rate would be absolutely ruinous to the Midland; that it would not pay operating expenses; and, besides, there is no section of the law under which such contention can be maintained.

Again, in this connection and by way of illustration, it may be asked by what right, or by what rule, shall a common carrier, whose duty it is

to serve the public impartially, be required to carry the goods shipped by a Cincinnati merchant, via Montgomery, to his customer at Troy, Alabama, for a less rate than is charged upon goods of the same class shipped by a Montgomery merchant to his customer at Troy, Alabama. And does not the contention here that Troy parties are entitled to the same rates per ton per mile from Montgomery to Troy that they get from the shipping points in the Northwest to Montgomery invoke a violation of the spirit, if not the letter, of the law itself, and show that such contention can not be sustained?

There is a suggestion, however, that because the transportation is under a common control or arrangement for a continuous carriage or shipment and under a through bill of lading, this operates, under the act, upon the rates that the roads participating in the carriage shall charge. Such a view as that can not be maintained under any section of the act. By the 1st section of the act it (the act) is made applicable to cases where the transportation is under a common control or management, a point which has not and could not be questioned; but that such clause eliminates from the 4th section the words, "under substantially similar circumstances and conditions," can not and is not contended.

In any aspect of the case it seems impossible to consider this complaint of the Board of Trade of Troy against the defendant railroad companies, particularly the Midland and Georgia Central railroads, in the matter of the charge upon property transported on their roads to or from points east or west of Troy, as specified and complained of, obnoxious to the 4th or any other section of the interstate-commerce act. The conditions are not substantially the same and the circumstances are dissimilar, so that the case is not within the statute.

The case made here is not the case as it was made before the Commission. New testimony has been taken, and the conclusion reached is that the bill is not sustained; that it should be dismissed, and it is so ordered.

195 (Indorsed:) No. 158. U. S. circuit court, mid. dist. of Ala.
Interstate Commerce Commission v. Alabama Midland Railway
Co. et als. Opinion of the court. Filed July 3, 1895. J. W. Dimmick,
clerk.

196 In the circuit court of the United States for the middle district of
Alabama.

THE INTERSTATE COMMERCE COMMISSION	} No. 158. In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY et als.	

This cause coming on to be heard was submitted for final decree upon the pleadings and testimony as set forth in the note of testimony filed in this cause.

And the cause having heretofore been fully argued by counsel and understood by the court;

Upon consideration whereof it is now ordered, adjudged, and decreed by the court that this cause be, and the same is hereby, dismissed out of this court.

July 3rd, 1895.

JOHN BRUCE, Judge.

(Indorsed :) No. 158. United States circuit court, middle district of Ala. Interstate Commerce Commission vs. Alabama Midland R. R. Co. et al. Final decree. Filed in open court this 3d day of July, 1895. J. W. Dimmick, clerk.

197 In the circuit court of the United States for the middle district of Alabama.

Petition for appeal.

No. 158. In equity.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD & Banking Company of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida & Western Railway Company; The Kansas City, Fort Scott & Memphis Railroad Company; The Kansas City, Memphis & Birmingham Railroad Company; The Louisville & Nashville Railroad Company; The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville & Terre Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; the Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; the Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The Boston & Maine Railroad Company; The New York & New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore & Ohio Railroad Company; The Providence & Springfield Railroad Company; The Cheshire Railroad Company; The Concord & Montreal Railroad Company.

To the Honorable Judge of said Court:

Your petitioner, the Interstate Commerce Commission of the United States, the complainant in the above-stated case, respectfully represents that the matter in dispute in said case exceeds the sum or value of \$5,000, exclusive of costs, and that in the final decree of said court, rendered in favor of the respondents on 3d day of July, 1895, there is manifest error committed, to the injury of this petitioner.

Wherefore petitioner, the Interstate Commerce Commission of the United States, being a department of the Government, prays an order granting an appeal from said decree to the United States circuit court of appeals for the fifth circuit.

HENRY D. CLAYTON,
United States District Attorney for Mid. Dist. of Ala.
L. A. SHAVER, *of Counsel.*

199 (Indorsed:) Filed in clerk's office July 18th, 1895. J. W. Dimmick, clerk.

200 In the circuit court of the United States for the middle district of Alabama.

Order allowing appeal.

No. 158. In equity.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD & Banking Company of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida & Western Railway Company; The Kansas City, Fort Scott & Memphis Railroad Company; The Kansas City, Memphis & Birmingham Railroad Company; The Louisville & Nashville Railroad Company; The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville & Terre Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; The

Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The Boston & Maine Railroad Company; The New York & New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore & Ohio Railroad Company; The Providence & Springfield Railroad Company; The Cheshire Railroad Company; The Concord & Montreal Railroad Company.

The grant of appeal.

In this cause the Interstate Commerce Commission of the United States, having made its application in writing for an appeal from the final decree therein to the United States circuit court of appeals for the fifth circuit, the said petitioner being a department of the Government, and this appeal entered as such, and it appearing to my satisfaction that the matter in dispute in said cause exceeds the sum or value of \$5,000, exclusive of costs, it is therefore ordered, adjudged, and decreed that said application for said appeal be, and the same is hereby, granted and made returnable not exceeding thirty days from this date, and that the same be filed in this court.

This 18th day of July, 1895.

JOHN BRUCE, *U. S. Judge.*

(Indorsed:) Filed in clerk's office July 18th, 1895. J. W. Dimmick, clerk.

In the circuit court of the United States for the middle district of Alabama.

Assignment of errors.

No. 158. In equity.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD & BANKING COMPANY of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida & Western Railway Company; The Kansas City, Fort Scott & Memphis Railroad Company; The Kansas City, Memphis & Birmingham Railroad Company; The Louisville & Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company;

The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville & Terre Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The Boston & Maine Railroad Company; The New York & New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore & Ohio Railroad Company; The Providence & Springfield Railroad Company; The Cheshire Railroad Company; The Concord & Montreal Railroad Company.

In this cause, being an appeal from the decree of the court in the above-stated case, comes the appellant, The Interstate Commerce Commission for the United States, by its solicitors, and charges and shows that there is manifest error to its injury in the record, and because thereof assigns the following grounds:

1. The court erred in its decree dismissing said cause out of said court.
2. The court erred in not rendering a decree for the enforcement against respondents of the entire order of the said Inter-state Commerce Commission, which is attached as Exhibit AB to the petition of said Commission to said court.
3. The court erred in not rendering a decree for the enforcement against respondents of that portion of said order which prescribes the rates to be charged by respondents for services performed in the transportation of class goods from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio, to Troy, Ala.
- 206 4. The court erred in not rendering a decree for the enforcement of that portion of said order which prescribed the rates to be charged by respondents for services performed in the transportation of class goods from New York, Baltimore, or other Northeastern points to Troy, Alabama.
5. The court erred in not rendering a decree for the enforcement against respondents of that portion of said order which prescribes the rate to be

charged by respondents for services performed in the transportation of cotton from Troy, Alabama, through Montgomery, Alabama, to New Orleans, Louisiana.

6. The court erred in not rendering a decree for the enforcement of that portion of said order which prescribes rates to be charged by respondents for services performed in the transportation of cotton from Troy, Alabama, to the Atlantic ports Brunswick, Charleston, Savannah, West Point, or Norfolk for export via those ports.

7. The court erred in not rendering a decree for the enforcement of that portion of said order which prescribes the rates to be charged by respondents for services performed in the transportation of cotton from Troy, Alabama, to the Atlantic ports Brunswick, Savannah, or Charleston as points of destination.

8. The court erred in not rendering a decree for the enforcement of that portion of said order which prescribes the rates to be charged by
207 respondents for services performed in the transportation of phosphate rock from the South Carolina and Florida phosphate fields to Troy, Ala.

9. The court erred in holding in its opinion in said cause that "the claim and argument" of the Interstate Commerce Commission "is that the difference in the charges for the transportation of property from points east or west to Montgomery and Troy is discriminating against Troy and in violation of "the long and short haul clause of section 4 of the act to regulate commerce." This is the "claim" of the Commission as to the charges for such transportation from and to the East, to and from Montgomery and Troy, but not from the West. The contention of the Commission is and was before said court that the rates on class goods over the lines of respondents from the West (Louisville, Cincinnati, and St. Louis) to Montgomery, Columbus, and Troy, respectively, are unjustly discriminatory against Troy and unduly preferential to Montgomery and Columbus, in violation of the 3d section of the act, which declares "that it shall be unlawful for any common carrier subject to its provisions to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

208 10. The court erred in holding in said opinion that the facts that there are long competing lines of transportation with through rates to Montgomery from the East and the West, and said city is located on a navigable river and has become a "trade center" or "distributing point," entitles it to rates relatively lower than those of Troy.

11. The court erred in holding in said opinion, in effect, that inasmuch as Montgomery has the natural advantage over Troy of location on a river she should be given by the respondents the additional advantage of preferential rail rates.

12. The court erred in holding in said opinion that Troy being "a city of (only) about 4,000 or 5,000 population, with two railroads, one of which is but recently constructed, and not a large distributing point and not on any navigable stream," is justly under the law subjected by the respondents

to the prejudice and disadvantage of rates preferential to her surrounding competitors, Montgomery, Columbus, and Eufaula. The contention of the complainant was that the act to regulate commerce was enacted in the interest of relative equality as between large and small towns or cities, and if, under relatively equal rates, comparatively small cities like Troy can elevate themselves to the class of large jobbing towns or distributing points, it is their right to do so.

13. The court erred in holding that, as stated in said opinion, "the complaint of Troy would almost seem to be that the railroad companies
209 had not made her a basing point" (trade center), "and that Montgomery, west of her on the Alabama River, and Columbus, east of her on the Chattahoochee River, being basing points, that this operated to her prejudice as a business point—which it no doubt does—and this is perhaps her real cause of complaint." All that was claimed for Troy before said court, and is now insisted upon, is that she be given relatively equal rates with her surrounding competitors, Montgomery, Columbus, and Eufaula. Troy asked no advantage in rates over the smaller localities in her vicinity. She does complain that her business interests have been prejudiced—as the said court admits to be the case—by the fact that in establishing rates to Montgomery and Columbus, they are treated as "basing points" or "trade centers."

14. The court erred in ignoring the fact that Troy is shown by the evidence to be a competitive point as well as Montgomery, Columbus, and Eufaula.

15. The court erred in holding in said opinion that the existence of long through competing lines of transportation to Montgomery would naturally operate to lower rates to Montgomery, but the existence of such lines to Troy should not have the same effect on rates to that city.

16. The court erred in holding in said opinion that competition between lines of transportation to Montgomery is a circumstance which under section 3 of the act to regulate commerce will justify the giving to that city a preference or advantage in rates over Troy.

210 17. The court erred in holding in said opinion that such competition constitutes a dissimilar circumstance or condition under the 4th section of the act to regulate commerce.

18. The court erred in holding in said opinion that competition of carrier with carrier, both subject to the act, constitutes such a substantial dissimilarity of circumstance and condition as will relieve the carrier from the operation of the 4th section of the act to regulate commerce, and in holding that such competition will authorize the carrier to act upon its own judgment in charging a greater rate for the shorter than the longer haul without first invoking the exercise of the discretion of the Commission as provided in said section.

19. The court erred in not holding, as complainant contended, that if competition could in any event relieve a carrier from the "long and short haul rule" of the 4th section of the act to regulate commerce, or justify discrimination in any form, such competition must be actual—not merely possible or probable—and of controlling force, and in respect to traffic important in amount.

20. The court erred in not holding, as complainant contended, that competition which will be brought into action only by unreasonable or excessive

rates is not such competition as will relieve a carrier from the "long and short haul rule" of the 4th section of the act to regulate commerce or justify discrimination in any form, and that to allow the natural outcome or result of excessive rates to be made the ground for a license to discriminate would be to permit the carrier to take advantage of what would be its own wrong.

21. The court erred in holding in said opinion that the rates to Montgomery are regulated by competition between the transportation lines to that point, when it appears that said rates are established by agreement between said lines as members of the Southern Railway and Steamship Association.

22. The court erred in holding that the competition proven in this case justifies discrimination against Troy, in favor of Montgomery and Columbus, to the extent shown to exist under the rates complained of.

23. The court erred in not holding that the rates prescribed by the Commission in its order make due allowance for any dissimilarity of circumstance or condition shown to exist affecting transportation to Montgomery and Troy, respectively. Under the rates prescribed by the Commission, where Troy is the shorter distance point, Troy is given, not a less, but the same rate as Montgomery, and on the other hand, where Troy is the longer distance point, she is given, not the same, but a higher rate than Montgomery.

24. The court erred in holding in said opinion that, as stated therein, "the evidence shows that in cases of transportation of property from Northwestern points, such as St. Louis, Cincinnati, or Louisville, the shipments come to Montgomery and from there to Troy, and that the rate is so much from shipping points to Montgomery, and the Alabama Midland Railroad charges what is called the local rate from Montgomery to Troy." The court, as appears from what follows in said opinion, means by this that there are two distinct shipments and two distinct rates, and places the alleged shipment from Montgomery to Troy on the basis of a shipment of traffic originating at Montgomery. The contention of the complainant before said court was, that there is but one shipment and one through rate from the points of origin of such shipments to Troy, inasmuch as the evidence is that such shipments are made under a through bill of lading naming an aggregate through rate and are over a through line of connecting roads under a joint tariff of rates united in and agreed upon by said roads, and in car-load lots without transfer or breakage of bulk at Montgomery.

25. The court erred in holding in said opinion that Troy, in objecting to the charge of the local rate between Montgomery and Troy as a part of her through rate from Northwestern points or to New Orleans, is seeking an advantage of the Montgomery merchants who ship from Montgomery to Troy under the local rate. Troy does not complain that on shipments originating at Troy and terminating at Montgomery, or originating at Montgomery and terminating at Troy, the local rates between those cities are charged, but does object to the charge of such locals as proportions of through rates to or from Troy.

26. The court erred in holding in said opinion that "the evidence shows that such a rate"—that is, a through rate from Northwestern cities to Troy or from Troy to New Orleans, not made up for that portion of the haul

of the local rate between Montgomery and Troy—"would be absolutely ruinous to the Midland Railroad; that it would not pay operating expenses, and besides there is no section of the law under which such contention" (contention for such rate) "can be maintained."

HENRY D. CLAYTON,

United States District Attorney for Middle Dist. of Ala.

L. A. SHAVER, *of Counsel.*

214 (Indorsed:) Filed in the clerk's office this 18th day of July, 1895. J. W. Dimmick, clerk.

216 TESTIMONY BEFORE THE INTERSTATE COMMERCE COMMISSION.

THE BOARD OF TRADE OF TROY

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

Depositions taken at Troy, Ala., November 11th, 1892, 10 a. m., before Com'r J. C. Clements, of the Interstate Commerce Com.

Appearances: Hon. W. C. Oates, for complainant; A. A. Wiley, esq., for the Savannah, Florida & Western Railway Company and the Alabama Midland Railway Company; J. D. Gardner, esq., of the firm of Gardner & Wiley, for the Central Railroad & Banking Company of Georgia.

Frank Lyon, stenographer.

217 After the reading of the complaint by the counsel for the complainant and the reading of the answer of the Alabama Midland Railway Company, by Mr. Wiley, counsel, and a statement by him that the answer of the Savannah, Florida & Western Railway Company was substantially the same, and the reading of the answer of the Central Railroad of Georgia by Mr. Gardner, counsel, complainant called the following witnesses:

J. D. MURPHEE, a witness on behalf of complainant, having been duly sworn, testified as follows:

Mr. OATES. Have you any connection with the Board of Trade?

Mr. MURPHEE. Yes, sir; I am its president.

Mr. OATES. What sort of a company or corporation is it?

Mr. MURPHEE. It is not incorporated at this time, I believe. It has been organized, I think, since our last legislature met. It will be incorporated the next session.

Mr. OATES. Who compose the officers of the board?

Mr. MURPHEE. There are five laid down in there. [Referring to the constitution and by-laws of the Troy Board of Trade.] And then we have various committees on different departments.

Mr. OATES. What is the object and purpose of the organization—the commercial and financial interests of the city of Troy?

218 Mr. MURPHEE. Yes, sir; for the general benefit of the place.

Mr. WILEY. Has it been incorporated under any law?

Mr. MURPHEE. I do not think it has; I am president, but have not been as active as some others.

Mr. GARDNER. Did you not say it was organized by act of the legislature?

Mr. MURPHEE. No; it has been organized since the last legislature, but the purpose is to have it incorporated as soon as the legislature meets; in all other respects I think it is organized like all other organizations of this kind.

Mr. WILEY. It is an association but not a corporation?

Mr. MURPHEE. It is an association as it now stands, but it will be incorporated; we have the constitution and by-laws setting forth the objects and purposes of the association.

Mr. OATES. Is this a copy of the constitution and by-laws [referring to a copy of the same, which he has in his hand]?

Mr. MURPHEE. Yes, sir.

Mr. OATES. I desire to offer this in evidence.

(The same is marked Exhibit No. 1.)

Mr. OATES. How long has the association been in existence?

Mr. MURPHEE. I do not remember the date; it was sometime
219 last year, perhaps sometime in the fall; I think it was in the fall.

Mr. OATES. The board of trade, then, is simply an association on the part of the citizens of Troy as set forth in the constitution and by-laws?

Mr. MURPHEE. Yes, sir.

Mr. OATES. And do the constitution and by-laws here contain all there is with reference to that organization showing its existence?

Mr. MURPHEE. I think it does; yes, sir.

Mr. OATES. That is all.

No cross-examination.

O. C. WILEY, a witness on behalf of the complainants, having been duly sworn, testified as follows:

Mr. OATES. Where do you reside?

Mr. WILEY. In Troy.

Mr. OATES. In what business are you engaged?

Mr. WILEY. I am president of the Troy Fertilizer Company.

Mr. OATES. Are you familiar with the rates on the shipment
220 over the different lines of railway reaching this point of phosphate fertilizer material, from the East, and if so, state what you know about it.

Mr. WILEY. Yes, sir; I am familiar with those rates.

Mr. OATES. State all the facts within your knowledge.

Mr. WILEY. Phosphate rock comes from South Carolina and Florida. There are only two points in Carolina that we ship rock from, and they are Charleston and Port Royal. The rate on the two roads to this point is \$3.22 a ton—a short ton—2,000 lbs.

Mr. OATES. What is it to Montgomery?

Mr. WILEY. \$3.00. I put it at \$3.22. Of course from the extreme end of Florida it is higher. It is as high as \$3.70 to this point. From points on the S. F. & W. R. R. the rate is the same.

Mr. WILEY. The same rate as what?

Mr. WILEY. As from Charleston and Port Royal—\$3.22 to this point, and \$3.00 to Montgomery.

Mr. OATES. Over the Midland road on shipments made to Montgomery, does it pass through Troy?

Mr. WILEY. The shipments pass through Troy over this road.

Mr. OATES. Montgomery is how many miles west of here?

Mr. WILEY. 52 miles, but the mileage basis allows us a rate of \$1.75 from Jacksonville, Fla., to this point, and \$2.00 to Montgomery. We had a rate of half a cent a mile, which gave us \$1.75, and Montgomery \$2.00. But the rate has been made the same over the S. F.

221 & W. R. R. as the Central Railroad had. By some contention between the two roads the rate was fixed the same, as the Central Railroad complain that otherwise the freight would go over the S. F. & W. and the Alabama Midland. Half a cent a mile is about the rate, as I understand it, from Charleston here over the Central Railroad.

Mr. OATES. The Central charges the same here as the Midland?

Mr. WILEY. Yes, sir; \$3.22.

Mr. OATES. Is there any difference between the distance to this point by that road and to Montgomery?

Mr. WILEY. Yes, sir; we are about 10 miles nearer.

Mr. OATES. Then it passes over 10 miles more of road in making that shipment by the Central to Montgomery than to this point?

Mr. WILEY. Yes, sir; it is the difference between Union Springs here and Union Springs to Montgomery. It is 30 miles from Union Springs to this point and 40 miles from Union Springs to Montgomery.

Mr. OATES. Is that rate of \$3.00 to Montgomery and \$3.22 to Troy by the Midland now in existence?

Mr. WILEY. Yes, sir; as I understand it. If it has been changed it has been a recent change.

Mr. OATES. And the same is true in respect to the Central?

Mr. WILEY. Yes, sir.

Mr. OATES. Do you know anything about the rate on the shipment of cotton-seed oil over any of these lines?

222 Mr. WILEY. Yes, sir.

Mr. OATES. State what you know about it.

Mr. WILEY. To the west?

Mr. OATES. Yes, sir.

Mr. GARDNER. Do you embrace that in the articles complained of?

Mr. OATES. Only in a general charge.

Mr. WILEY (counsel). What is the general charge?

Mr. OATES. I will amend it if necessary.

Mr. WILEY (witness). The rate on oil from here to the Ohio River—cotton-seed oil—is 30 cents per hundred pounds.

Mr. OATES. By what road?

Mr. WILEY. By either road—both roads. Union Springs, Columbus, and Eufaula have a 26-cent rate and Montgomery has a 20-cent rate.

Mr. OATES. There is an oil mill here?

Mr. WILEY. Yes, sir; we have one in connection with the fertilizer department.

Mr. OATES. In shipments over the Central Railroad, what places named do they have to go through in going west up to the Ohio River?

Mr. WILEY. It goes via Montgomery, all we have to ship.

Mr. OATES. That would be by the Midland? And then what road would it take from there?

Mr. WILEY. The Louisville & Nashville.

Mr. OATES. Do you ship also by the Central from here?

223 Mr. WILEY. Yes, sir.

Mr. OATES. That passes through Union Springs?

Mr. WILEY. Yes, sir.

Mr. OATES. Then by Columbus or Montgomery?

Mr. WILEY. By Montgomery.

Mr. OATES. And how much shorter distance is it from Union Springs?

Mr. WILEY. It is a longer distance from here to Montgomery. It is 30 miles longer—

Mr. OATES. From here to Montgomery and northward and westward than from Union Springs?

Mr. WILEY. And about 10 miles further over the Midland Railroad. But Eufaula has the same rate as Union Springs. All the mills in this territory except those places have the same rate. Columbus, Union Springs, and Eufaula have a 26-cent rate. Eufaula and Columbus are further off.

Mr. OATES. They charge them less for the greater distance?

Mr. WILEY. Yes, sir.

Mr. OATES. And Union Springs is a point through which that class of freight passes when shipped by the Central road via Montgomery?

Mr. WILEY. Via Montgomery.

Mr. WILEY (counsel). The Alabama Midland and the Savannah, Florida & Western road object to the foregoing testimony in reference to cotton-seed oil, upon the ground that there is no allegation in the complaint on that subject.

224 Mr. OATES. And you say that from Montgomery the rate on the shipment of cotton-seed oil up northward by the Louisville & Nashville Railroad is 20 cents?

Mr. WILEY. Yes, sir; that reaches to the Ohio River.

Mr. OATES. Do you know anything about the rate on class goods over these lines?

Mr. WILEY. No, sir; it is not my line.

Mr. OATES. I will ask you to show the extent of the interest involved. What is the investment here in Troy in the way of fertilizers, manufactures, etc.? Is the sale of fertilizer extensive, or is it a small business?

Mr. WILEY. It is extensive.

Mr. OATES. About what is the general value per annum?

Mr. WILEY. We sell from seven to eight thousand tons a year. I suppose there are three thousand tons handled outside.

Mr. OATES. Just state in dollars the value of that.

Mr. WILEY. It would average \$20 a ton, or \$200,000.

225 Cross-examination:

Mr. WILEY (counsel). Montgomery is the capital of Alabama?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). Situated at the headwaters of navigation of the Alabama River?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). That is a navigable river, is it not, from Montgomery to the Gulf?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). Do you know how many railroads concenter there?

Mr. WILEY (witness). Five or six, or perhaps more.

Mr. WILEY (counsel). The Louisville & Nashville centers there?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). The Western of Alabama?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). The Savannah, Americus and Montgomery?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). The Alabama Midland?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). The Lucerne Extension of the Midland?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). M. & M.?

226 Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). Montgomery and Selma?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). There are three different systems; the L. & N. and the M. & M. form a part of the same system. The Montgomery and Eufaula forms part of the Georgia Central system. The Western of Alabama and the Montgomery & Selma belong to the East Tennessee, Virginia & Georgia system. The Alabama Midland and Luerne Extension and the Savannah, Florida & Western form a part of the same system?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). They have a very large oil mill in Montgomery?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). They also have very large fertilizer works?

Mr. WILEY (witness). Yes, sir.

Mr. WILEY (counsel). Do you know what business is done in the city of Montgomery?

Mr. WILEY (witness). In the way of fertilizers?

Mr. WILEY (counsel). Yes, sir.

Mr. WILEY (witness). No, sir; but it is pretty extensive, I think.

Mr. WILEY (counsel). Do you know how many bales of cotton are received annually at Montgomery?

Mr. WILEY (witness). About 150,000, I should judge.

227 Mr. WILEY (counsel). How many in Troy?

Mr. WILEY (witness). About thirty-five or forty thousand.

Mr. WILEY (counsel). That 40,000 is a pretty large estimate, is it not?

Mr. WILEY (witness). I do not think we were far behind that last year.

Mr. GARDNER. It never exceeded 35,000.

Mr. BASHINSKY. Yes, sir; it exceeded 38,000 bales last year.

Mr. WILEY (counsel). What is the population of Montgomery?

Mr. WILEY (witness). 25,000.

Mr. WILEY (counsel). Montgomery with its suburban population would be 40,000.

Mr. OATES. It is about 30,000, I think.

Mr. WILEY (counsel). What is the population of Troy, the census population?

Mr. WILEY (witness). About 4,000.

Mr. WILEY (counsel). The foreign as well as the Northern and Eastern markets are reached by Montgomery through New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Charleston, West Point, and Norfolk, are they not?

Mr. WILEY (witness). I should say so.

Mr. WILEY (counsel). You do not know what is the volume of business of the Alabama River connecting with the seaports?

228 Mr. WILEY (witness). No, sir.

Mr. WILEY (counsel). These phosphates are mined principally in South Carolina and on the Florida coasts, are they not?

Mr. WILEY (witness). A great deal of it is in the extreme northern part of Florida. Some up on the S., F. & W. system.

Mr. WILEY (counsel). It comes from what point down in Florida?

Mr. WILEY (witness). We have brought rock in the neighborhood of Gainesville.

Mr. WILEY (counsel). And then as far down as Tampa?

Mr. WILEY (witness). Yes, sir; we get it around Ocala.

Mr. WILEY (counsel). Where are these phosphates generally mined in South Carolina?

Mr. WILEY (witness). On the coast around Charleston and Port Royal, the principal shipping points.

Mr. WILEY (counsel). Do you know how transportation from these mines situated on the Gulf coast of Florida is had between Montgomery and the Gulf coast, whether by rail or by water or both?

229 Mr. WILEY (witness). By rail altogether.

Mr. WILEY (counsel). That is for Troy?

Mr. WILEY (witness). For Montgomery, too.

Mr. WILEY (counsel). Do you mean to say that you can not bring phosphates by way of Mobile from Tampa?

Mr. WILEY (witness). I say it has not been done up to date.

Mr. WILEY (counsel). Up to Montgomery?

Mr. WILEY (witness). No, sir; not by water.

Mr. WILEY (counsel). So far as you know?

Mr. WILEY (witness). I think I know; I think it is impossible for it to be done.

Mr. WILEY (counsel). Have you ever been to Tampa?

Mr. WILEY (witness). No.

Mr. WILEY (counsel). You have never seen the ships load with phosphates there at Tampa Bay?

Mr. WILEY (witness). I know it is done for foreign ports. But the goods would have to be transferred at Mobile to get to Montgomery, and then they would have to be hauled to the works. I have tried to get a rate by boat line to Montgomery and have never been able to do it.

Mr. WILEY (counsel). In regard to shipments of phosphate rock to Montgomery, do you mean to say that all shipments of phosphate rock passes through Troy?

Mr. WILEY (witness). No, sir; I say that all from Carolina does. The Western Railroad, I suppose, hauls rock to Montgomery, and also

230 the Louisville & Nashville Railroad hauls from the extreme southern part of Florida.

Mr. WILEY (counsel). Shipment of phosphate rock, whether mined in South Carolina or Florida, how do those phosphate rocks reach Montgomery?

Mr. WILEY (witness). They can reach it over the Central Railroad; they can reach it over the Western Railway or the Alabama Railroad, and the Louisville & Nashville Railroad.

Mr. WILEY (counsel). There are various ways of getting to Montgomery without passing through Troy necessarily?

Mr. WILEY (witness). Yes, sir.

Mr. OATES. Troy is the most direct route over the Midland?

Mr. WILEY (witness). Yes, sir; but the only way that rock could come over the S. F. & W. Railway to Montgomery would be through Troy. The Plant system extends from Montgomery to Charleston.

Mr. GARDNER. I do not think you made it clear that the Central does not ship through Troy in shipping to Montgomery.

Mr. WILEY (witness). Oh, no; it does not.

Mr. WILEY (counsel). And the S. A. & M. road does not ship through Troy in going to Montgomery?

Mr. WILEY (witness). No, sir.

Mr. WILEY (counsel). The Louisville & Nashville does not ship through Troy?

231 Mr. WILEY (witness). No, sir.

Mr. OATES. But you said that the South Carolina phosphate that is shipped must come over the Midland?

Mr. WILEY (witness). To reach Montgomery?

Mr. OATES. Yes, sir.

Mr. WILEY (witness). Yes, sir.

Mr. OATES. And through Troy?

Mr. WILEY (witness). Yes, sir.

Mr. OATES. Is there a large amount of it shipped that way?

Mr. WILEY (witness). I do not think that lately they have been shipping rock from there to Montgomery. They have been closed down there for some time. Rock has passed through here; I have seen it, but do not know whether it was from Florida or South Carolina.

Mr. OATES. All that comes over the Midland road has to pass through Troy to get to Montgomery?

Mr. WILEY (witness). Yes, sir.

Mr. OATES. State again whether a large amount is shipped from either South Carolina or Florida over the Midland road by Troy to Montgomery.

Mr. WILEY (witness). I can not state that just now, what is passing, for the reason that the works have been shut down during the summer.

Mr. OATES. You do not know the extent of the shipment at this time?

232 Mr. WILEY (witness). No, sir; they have shipped rock by Troy.

Mr. OATES. At the rates you stated?

Mr. WILEY (witness). Yes, sir.

At this hour (1 o'clock p. m.) a recess was taken for one hour and thirty minutes, at the expiration of which time the taking of testimony was resumed.

AFTER RECESS, 2.30 o'clock p. m.

B. M. TALBOT, a witness on behalf of the complainant, having been duly sworn, testified as follows :

Mr. OATES. Where do you reside ?

Mr. TALBOT. Troy, Ala.

Mr. OATES. In what business are you engaged ?

Mr. TALBOT. I am engaged in the jobbing business—the grocery business.

Mr. OATES. Are you familiar with the shipping rates of the two railroads and their connections which reach this point ?

233 Mr. TALBOT. Yes, sir.

Mr. OATES. What is the class of freights with which you are most familiar ?

Mr. TALBOT. Groceries usually come in from sixth class on.

Mr. OATES. You are familiar with the freight rates on the different classes. Look at that table [exhibiting copy of complaint to the witness]. State what knowledge you have as to that.

Mr. TALBOT. The articles that come in our line of business are sugars, coffees, teas, and things of that sort. Those are in sixth class. Bagging and ties, eighth. Meats, B class.

Mr. OATES. Now, tell where you ship from and over what lines and at what rates.

Mr. TALBOT. We get the principal part of our heavy goods from the West.

Mr. OATES. What do you mean by the West ?

Mr. TALBOT. We get them from Ohio River points and St. Louis, Kansas City, and Chicago.

Mr. OATES. What rates of freight do you pay and over what lines do you get it ?

Mr. TALBOT. Well, I do not hardly know the lines they come over until they reach Montgomery. They sometimes come over first one and then the other, but I think the Louisville & Nashville has the principal business ; that is, from Ohio River points.

234 Mr. OATES. To Montgomery, and what road from there ?

Mr. TALBOT. From there it comes over the Alabama Midland or the Georgia Central.

Mr. OATES. Some comes over each road here ?

Mr. TALBOT. Yes, sir.

Mr. OATES. Now, what is the freight rate ; what do you pay per hundred on these classes of goods with which you are familiar ?

Mr. TALBOT. Well, we will take, for instance, first, meat ; that is B class. We pay from Louisville 50 cents per 100.

Mr. OATES. From Louisville to this point ?

Mr. TALBOT. Yes, sir ; from Louisville to this point. Take flour ; we pay 60 cents a barrel. Grain (that includes corn and bran and hay and things of that sort), that is D class. We pay 32 cents a hundred.

Mr. OATES. All coming by way of Montgomery ?

Mr. TALBOT. Yes, sir.

Mr. OATES. What is the rate to Montgomery ?

Mr. TALBOT. The rate to Montgomery on meat is 31 cents.

Mr. OATES. And 50 here ?

Mr. TALBOT. And 50 here; a difference of 19 cents a hundred.

Mr. TALBOT. State about the others.

Mr. TALBOT. Grain is 20 cents a hundred; a difference of 12 cents. Flour, 40 cents a barrel; a difference of 26 cents a barrel in favor of Montgomery. That is from Ohio River points—what the railroads
235 term the Ohio River. That takes in Louisville, Paducah, Henderson, and all these towns there on the Ohio River.

Mr. OATES. Does that include Cincinnati?

Mr. TALBOT. No, sir; that does not take in Cincinnati.

Mr. OATES. Do those freights come through in continuous bulks in the same cars from Montgomery over the Louisville & Nashville, or is the bulk broken and transferred?

Mr. TALBOT. Sometimes there is a transfer made on account of the car being broken.

Mr. OATES. I am asking the usual course.

Mr. TALBOT. It comes through in the same cars in which it is loaded.

Mr. OATES. What is the charge, if you know, on the same freight over the Midland to other points east of this?

Mr. TALBOT. To other points east of this?

Mr. OATES. Yes, sir; such as Ozark and Dothan.

Mr. TALBOT. Do I understand you to mean the freight direct?

Mr. OATES. You have testified what the freight charge is to this point. Do you know what it is to points east of this?

Mr. TALBOT. Do you mean by way of Montgomery from the same points?

Mr. OATES. Yes, sir; of course; by way of Montgomery by way of the same points.

Com'r. CLEMENTS. These rates, I suppose, are all on file with the
236 Commission, and of course will be in evidence. You can, however, refer to them here if you wish. The rates, as published by the roads, are all on file with the Commission.

Mr. TALBOT. To Ozark it is 54 cents on bacon—meat.

Mr. OATES. That is Class B?

Mr. TALBOT. Yes, sir. On grain, which is Class D, it is 34 cents.

Mr. OATES. 34 or 35?

Mr. TALBOT. 35. On flour it is 72 cents from those points; those I have mentioned—those Ohio River points.

Mr. OATES. That is Class F?

Mr. TALBOT. Yes, sir.

Mr. OATES. Have you looked over that or any similar schedules [referring to a statement in the complaint]?

Mr. TALBOT. Yes, sir.

Mr. OATES. Is that a correct statement?

Mr. TALBOT. Yes, sir.

Mr. OATES. Do you know anything about the reshipment of these classes of goods, say, from Columbus over the Georgia Central to Brantley, 28 miles south of this place?

Mr. TALBOT. Yes, sir.

Mr. OATES. State about the charges.

Mr. TALBOT. Columbus jobbers are enabled to ship goods into Brantley—

Mr. OATES. State what they do.

237 Mr. TALBOT. They do ship goods there a great deal cheaper than we can. They can ship Class B, which is meat, 8 cents a hundred less than we can, their rate being 56 cents and ours 64. Grain, Class D, they get there on a rate of 37 cents; we pay 44, a difference of 7 cents.

Com'r CLEMENTS. You are speaking of shipments from Columbus, Ga., to that place?

Mr. OATES. Yes, sir; to Brantley, south of this place. It is on the Georgia Central, 28 miles south of here.

Mr. TALBOT. They ship flour there 7 cents a barrel cheaper than we can ship it, our rate being 95 and theirs 88.

Mr. GARDNER. I understand you to say that the rate is less from Brantley to Columbus than from Troy to Brantley?

Mr. TALBOT. The Columbus merchants ship cheaper to Brantley than we can.

Mr. WILEY. You do not complain that they can ship cheaper to Brantley than to Troy, but they want the discrimination in favor of the Troy merchants.

Mr. GARDNER. The complaint is that they ship from Columbus to Brantley cheaper than you can from Troy to Brantley?

Mr. TALBOT. Yes, sir; that is what I mean.

Mr. OATES. What is the freight charge on this class of goods from Columbus to Brantley on flour or meat?

Mr. TALBOT. From Columbus to Brantley according to the table of rates here it is made up of the cost from the starting point, taking Ohio River points as the basis, over to Columbus, and then to Brantley.

238 Mr. OATES. You have not it separated from Columbus to Brantley?

Mr. TALBOT. No, sir; I have not.

Mr. OATES. So, you can not compare the rates of shipment from Columbus to Brantley and from Columbus to Troy?

Mr. TALBOT. No, sir; I have not the rates from Columbus proper to Brantley.

Mr. OATES. They charge less, however, in shipping from Columbus to Brantley than they do from shipping from Troy to Brantley?

Mr. TALBOT. Yes, sir.

Mr. OATES. What is the difference in distance?

Mr. TALBOT. The difference in distance is 85 miles.

Mr. OATES. How about shipments from Montgomery over the Midland to points east of this place, to Ozark or Dothan?

Mr. TALBOT. To Ozark, Montgomery gets in there with a rate on Class D of 54 cents; Troy, 66 cents.

Mr. OATES. They ship on Class D goods from Montgomery to Ozark for 54 cents a hundred?

Mr. TALBOT. Yes, sir.

Mr. OATES. And from Montgomery to Troy, or from Troy to Ozark?

Mr. TALBOT. From Troy to Ozark 66 cents, making a difference of 12 cents in favor of Montgomery.

Mr. OATES. How many miles is it to Ozark from Troy?

239 Mr. TALBOT. I think it is 40 or 42 miles.

Mr. OATES. 40 miles?

Mr. TALBOT. Yes, sir.

Com'r. CLEMENTS. Are those shipments from Montgomery to Ozark by way of Troy?

Mr. TALBOT. Yes, sir.

Mr. OATES. And then the shipment from Montgomery to Ozark of Class B goods is made over this Midland road for 54 cents?

Mr. TALBOT. And over its connections.

Mr. OATES. It would have to come over the Midland?

Mr. TALBOT. Yes, sir.

Mr. OATES. And then from Troy to Ozark, which is 52 miles less, they charge 2 cents a hundred more?

Mr. TALBOT. It is 12 cents. Class D is 43 from Troy and 35 from Montgomery, a difference of 8 cents. Flour to Troy 90 cents, Montgomery 72 cents, a difference of 18 cents a barrel.

Mr. OATES. Less for the longer haul?

Mr. TALBOT. Yes, sir.

Cross-examination:

Mr. WILEY. Columbus is a competitive point, is it not?

240 Mr. TALBOT. Yes, sir.

Mr. WILEY. Situated on the Chattahoochee River?

Mr. TALBOT. Yes, sir.

Mr. WILEY. It is a river town?

Mr. TALBOT. I believe it is so considered.

Mr. WILEY. The Chattahoochee is navigable up to Columbus?

Mr. TALBOT. I do not think it is all seasons of the year; usually it is.

Mr. WILEY. Do you know the volume of business done in Columbus?

Mr. TALBOT. No, sir; I do not have much idea as to the volume of business done there.

Mr. WILEY. What size place is it?

Mr. TALBOT. It is a place of 18,000 or 20,000.

Mr. WILEY. How many railroads converge there?

Mr. TALBOT. I do not know exactly how many; it is three or four—three, I think.

Mr. WILEY. How far is Ozark from Montgomery?

Mr. TALBOT. From Montgomery to Ozark is 92 miles.

Mr. WILEY. And it is 52 miles from here to Montgomery?

Mr. TALBOT. Yes, sir.

Mr. WILEY. What is the difference in the price of freights from Montgomery to Ozark and from Montgomery to Troy, on an average—how much cheaper is it to Troy than to Ozark?

Mr. TALBOT. How much cheaper?

Mr. WILEY. Yes, sir.

241 Mr. TALBOT. On an average, I suppose, about 2 cents—2 or 3 cents.

Mr. WILEY. 2 or 3 cents cheaper at Troy than at Ozark?

Mr. TALBOT. Yes, sir.

Mr. WILEY. Ozark is a competitive point, is it not?

Mr. TALBOT. Of Troy?

Mr. WILEY. It has two railroads meeting there?

Mr. TALBOT. Yes, sir; it has two railroads meeting there.

Mr. WILEY. Do you remember what roads they are? The Alabama Midland is one.

Mr. TALBOT. And the Georgia Central is the other—the same as here.

Mr. WILEY. Your complaint is that they do not charge Ozark enough, is that it?

Mr. TALBOT. No, sir; they charge us too much.

Mr. WILEY. But you are less than Ozark?

Mr. TALBOT. Yes, sir.

Mr. WILEY. Brantley is 28 miles southwest from here on the Mobile & Girard road. How far north of Brantley is the Luverne Extension of the Alabama Midland?

Mr. TALBOT. It is 15 or 20 miles.

Mr. GARDNER. It is 11 or 12 miles.

Mr. WILEY. Are you able to state, in shipping goods from Columbus, Ga., to Troy, and in making shipments from Columbus to Brantley, what the difference is in favor of Troy on an average?

242 Mr. TALBOT. It would be any less.

Mr. WILEY. I am speaking of Columbus as a shipping point. How much less is the freight rate, on an average, from Columbus to Troy than on shipments from Columbus to Brantley?

Mr. TALBOT. I suppose the difference is about the same as between Ozark and Troy.

Mr. WILEY. On an average, about 2 cents?

Mr. TALBOT. Yes, sir; 2 cents difference in favor of Troy.

Com'r CLEMENTS. I understood you a while ago to say in your direct examination that the rate from Montgomery to Ozark was lower than from Montgomery to Troy on certain schedules.

Mr. TALBOT. Yes, sir.

Com'r CLEMENTS. What is the complaint as to those points?

Mr. TALBOT. The point is that it costs the Troy merchants to get goods into Ozark more than it does the Montgomery merchant to get into Ozark.

Com'r CLEMENTS. I understood you to say that the rate is higher from Montgomery to Ozark than to Troy?

Mr. TALBOT. Yes, sir.

Com'r CLEMENTS. I understood you to say that it costs more to ship from Montgomery to Troy than it does from Troy to Ozark.

243 Mr. TALBOT. No, sir.

Com'r CLEMENTS. Did I understand you to testify that the rate is higher from Troy to Ozark than from Montgomery to Ozark?

Mr. TALBOT. Yes, sir.

Com'r CLEMENTS. You do not mean proportionately per mile?

Mr. TALBOT. Yes, sir.

Mr. OATES. On through freights coming by Troy and going down to Ozark the rate is less by 2 cents to Troy than to Ozark, but goods stopping at Montgomery are shipped to Ozark at less rates than from Troy?

Mr. TALBOT. We claim that we are charged such a high rate to get goods into Troy and then to pay our local rate out to these other points, just the same local rate as Montgomery does, that they can come into these points on a great deal less basis than we do.

Mr. WILEY. What is the rate from Ozark and other competitive points to Dothan? Take the Ozark merchants shipping from Ozark to Dothan from any one of these points, do you know what is the rate there?

Mr. TALBOT. No, sir; I do not.

Mr. WILEY. Do you not know that the rate from Troy to Dothan is less than from Ozark to Dothan?

Mr. TALBOT. No, sir.

244 Mr. WILEY. What is the difference; do you know?

Mr. TALBOTT. I do not. It is my understanding that the local tariff is based on a mileage basis.

Mr. WILEY. I am just asking as to those Kentucky points. What is the name of your firm?

Mr. TALBOTT. Charles Henderson & Co.

Mr. WILEY. You are a member of the firm?

Mr. TALBOTT. Yes, sir.

Mr. WILEY. That is the only firm in the town of Troy that does a wholesale business, is it not?

Mr. TALBOTT. At present; yes, sir.

Mr. WILEY. Do you know how many firms in the city of Montgomery do a wholesale business?

Mr. TALBOTT. No, sir; I do not, but I suppose 15 or 20.

Mr. WILEY. There is a considerable difference in the volume of business?

Mr. TALBOTT. This freight rate is just what keeps more from being done here.

Com'r CLEMENTS. Now let me ask you again in regard to shipments to Brantley. What is the complaint in regard to that? The shipments from Ohio River points by way of Columbus you were comparing with the Ohio River points by way of Montgomery.

Mr. TALBOTT. Shipments by way of Columbus from Ohio River points to Brantley. Columbus gets in there, say, on an average of 5
245 cents a hundred less freight than shipments from Ohio River points via Troy to Brantley. They are both via Troy.

Com'r CLEMENTS. The Ohio River points shipments by way of Columbus come by Troy?

Mr. TALBOTT. Yes, sir.

Com'r CLEMENTS. And also those that come by Montgomery also go by Troy; do they?

Mr. TALBOTT. Yes, sir.

Mr. WILEY. He does not contend that from Columbus, Ga., to Brantley the rate is less than from Columbus to Troy; but the contention is that it costs more to ship from Troy to Brantley, 28 miles, than from Columbus to Brantley, a distance of about 100 miles.

Mr. TALBOTT. It is 113 miles.

Mr. WILEY. The Alabama Midland runs within 12 miles of this point—Brantley. It is not on that road now, but soon will be.

Com'r CLEMENTS. The fact he states is that it costs more to ship from Troy to Brantley than it does from Columbus to Brantley, both shipments coming by Troy and one starts at Troy. The distance from Troy to Brantley is how far?

Mr. TALBOTT. 28 miles.

Com'r CLEMENTS. From Columbus to Brantley is how far?

Mr. TALBOTT. 113 miles.

246 Mr. OATES. You were asked about Columbus being on a navigable river. Are any of these groceries for this point shipped up or down that river?

Mr. TALBOTT. No, sir.

Mr. OATES. Were they ever for this section?

Mr. TALBOTT. No, sir; nor for Columbus, either.

Mr. OATES. Is there any jobbing business done from Ozark?

Mr. TALBOTT. No, sir.

Mr. OATES. Is Luverne a competitive point to Troy? Luverne is the terminus of the road from Montgomery?

Mr. WILEY. It is the Luverne extension of the Midland.

Mr. OATES. Luverne is the present southern terminus of that road?

Mr. TALBOTT. Yes, sir.

Mr. OATES. Is that point competitive with Troy?

Mr. TALBOTT. In what respect?

Mr. OATES. In business and freight rates.

Mr. TALBOTT. I should not think so, but they get some of our trade, it is true.

Mr. OATES. Let me see if I understand your testimony. You testified that in freights of the classes named from points on the Ohio River coming by way of Montgomery to this point (Troy)—what did you state was the difference between the rates on those classes of freight to Montgomery and Troy? Do you pay more freight from Troy to Brantley

247 than from Columbus to Brantley?

Mr. TALBOTT. We do not.

Mr. OATES. Suppose you start goods at Columbus. The railroad will charge less rate of freight on the same class of goods from Columbus for Brantley than from Troy to Brantley. You do not mean to say that?

Mr. TALBOTT. No, sir; I mean to say that it costs the Troy merchant more—

Mr. OATES. Don't state that, state what the rates are.

Mr. TALBOTT. Suppose I buy a car of meat in Louisville, Ky., for Charles Henderson & Co. that comes to Troy. I pay 50 cents freight to get it to Troy.

Com'r CLEMENTS. From Louisville to Troy by way of Montgomery?

Mr. TALBOTT. Yes, sir. Then I pay 15 cents to get to Brantley. That makes 65 cents that it costs me to get that meat into Brantley. Columbus gets in there for less. They buy this car of meat in Louisville, making the shipment into Columbus and then to Brantley, and they get it there for 14 cents a 100 less than we do.

Mr. OATES. Where is that difference? Is it on the shipment to Columbus from Louisville or from Columbus to Brantley that the difference is made? What is the rate from Louisville to Columbus?

248 Mr. TALBOTT. Thirty-six cents, while we pay fifty. There is a difference of 14 cents.

Mr. OATES. On that sort of shipment the rate is practically the same from Columbus to Brantley as it is from Troy to Brantley?

Mr. TALBOTT. Yes, sir.

Mr. OATES. And the two shipments pass over the same line from this point to Brantley?

Mr. TALBOTT. Yes, sir.

Mr. OATES. In both cases you state, by way of comparison, that there is a reshipment, for instance, from Troy to Brantley in the one case and from Columbus to Brantley in the other case.

Mr. TALBOTT. Yes, sir.

Mr. OATES. Without breaking bulk?

Mr. TALBOTT. Yes, sir. The same difference would exist if it was broken.

Mr. OATES. Do you know the difference in the freight rate on that class of freight to this place and to Eufaula?

Mr. TALBOTT. Yes, sir.

Mr. OATES. What is it?

Mr. TALBOTT. Eufaula, Opelika, and Columbus have the same rate from those Ohio River points. Class B is 36 to Eufaula; fifty to Troy. D is 32 to Troy and 25 to Eufaula.

Mr. WILEY. What is the population of Ozark?

249 Mr. TALBOTT. I suppose about 2,000.

Mr. WILEY. What is the population of Brantley?

Mr. TALBOTT. 7 or 8 hundred.

Mr. WILEY. Now, suppose a merchant in Brantley purchases meat at some point on the Ohio River and the same is shipped to Brantley either by Columbus, Ga., or Montgomery, Ala. How much higher rate on that shipment per hundred pounds does the Brantley merchant pay than the Troy merchant would pay on the shipment from the same point?

Mr. TALBOTT. He would pay, I think it is, 4 or 6 cents a hundred more.

Mr. WILEY. Suppose a merchant in Ozark should make a purchase of bulk meat from some point on the Ohio River, and the same is shipped to Ozark either by Columbus or Montgomery, how much higher rate on that shipment does the Ozark merchant pay than the Troy merchant would for the same shipment here?

Mr. TALBOTT. The difference there is four cents.

Mr. WILEY. Now, when you say that the Columbus merchant can put down freight in Brantley, in the manner that you have worked it out, cheaper than the Troy merchant can put it down at the same place, you mean in each of those cases that the shipments have to start from Columbus or Troy?

Mr. TALBOTT. The shipments start from the Ohio River point.

Mr. WILEY. Do you know of any mercantile establishment in Columbus doing business in Brantley?

250 Mr. TALBOTT. I suppose the Columbus Grocery Company does.

Mr. WILEY. Is that a branch of a Columbus house?

Mr. TALBOTT. Well, it is a jobbing house there.

Mr. WILEY. At Brantley?

Mr. TALBOTT. I do not understand your question.

Mr. WILEY. The question is, do you know any mercantile establishment of Columbus, Ga., that has a branch business in Brantley?

Mr. TALBOTT. No, sir; I do not.

Mr. WILEY. Or in Ozark?

Mr. TALBOTT. No, sir.

Mr. WILEY. Do you know of any mercantile establishment of Troy that has a branch business either in Ozark or Brantley?

Mr. TALBOTT. No, sir.

Mr. WILEY. You undertook just now to explain how it would cost the Troy merchant a higher price to deliver freight at Brantley than it would cost the Columbus merchant to deliver the same quality of goods at Brantley. In that character of business, would the shipment proceed from Troy and Columbus respectively, or do you mean through goods?

Mr. TALBOTT. Yes, sir; they would proceed from Troy and Columbus, and start from the West.

Mr. WILEY. Now, please explain how those goods would start from the West?

251 Mr. TALBOTT. They would come just as I illustrated in regard to that car of meat from Louisville.

Mr. WILEY. But you have just said that no merchant did a branch business at Brantley or Ozark.

Mr. TALBOTT. I believe that T. Z. Brent has a store at Brantley.

Mr. OATES. What is the object of the Troy people in desiring to obtain rates to compete with Columbus and Montgomery?

Mr. TALBOTT. Their object is to build up the town.

Mr. OATES. To get a fair chance, a fair competition?

Mr. TALBOTT. Yes, sir; and control the territory that she now has or has had.

Mr. OATES. Does that extend to the retail establishments or the jobbing business only?

Mr. TALBOTT. To both.

Com'r CLEMENTS. Do you know of any class of goods originating in Columbus that are shipped by way of Troy for a less rate than the same kind of goods are shipped from Troy to Brantley? Say nothing about where they come from, to Troy or Columbus.

Mr. TALBOTT. No, sir.

Mr. OATES. What do you get from the East in your business?

252 Mr. TALBOTT. Our freight from the East——

Mr. OATES. Sugar and coffee?

Mr. TALBOTT. Yes, sir; we get principally sugar and coffee from the East—New York and Philadelphia.

Mr. OATES. What constitutes first and second class goods from New York and Baltimore?

Mr. TALBOTT. First class is matches. Snuff is second class, I believe.

Mr. OATES. State what goods you get from Eastern markets.

Mr. TALBOTT. Our principal heavy goods from Eastern markets are coffees and sugars.

Mr. OATES. Over what lines do you get them?

Mr. TALBOTT. We get them both over the Georgia Central and the Midland.

Mr. OATES. What are the freight rates to this point?

Mr. TALBOTT. From Baltimore to Troy the sixth-class rate is 58 cents.

Mr. OATES. How much to Montgomery?

Mr. TALBOTT. 46. From Baltimore, on sixth-class freight, such as coffee and sugar, the rate would be to Troy 58 cents and 46 to Montgomery. From New York, on the same class, 61 to Troy and 49 to Montgomery.

Mr. OATES. Do you wish to state anything in regard to any other classes?

Mr. TALBOTT. No, sir; those are our principal goods here, except dry goods.

253 Com'r CLEMENTS. Those shipments just spoken of all go by way of Troy?

Mr. TALBOTT. Yes, sir; the Midland carries goods that way, but they all do not necessarily go that way.

Mr. OATES. Those coming to Montgomery by the Central from Eastern points—New York, Philadelphia, etc.—do not come through Troy?

Mr. TALBOTT. No, sir.

Mr. OATES. Only those passing over the Midland?

Mr. TALBOTT. Yes, sir.

Mr. WILEY. You were asked just now by Col. Oates if the object of the Troy merchants in desiring cheaper rates was not to extend their trade and get a fair chance in the race of commercial life. I will ask you if you do not think that is the object also of Ozark, Brantley, and Dothan merchants and other merchants along the line of these two roads?

Mr. TALBOTT. No, sir; if it is, they have not expressed themselves that way.

Mr. WILEY. They do not want any cheaper rates?

Mr. TALBOTT. I have not heard anything of it.

Mr. WILEY. Have you talked with them on that subject at all?

Mr. TALBOTT. I have not.

254 E. H. BASHINSKY, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. OATES. Where do you reside?

Mr. BASHINSKY. Troy, Alabama.

Mr. OATES. In what business are you engaged?

Mr. BASHINSKY. Cotton business.

Mr. OATES. State what kind of cotton business.

Mr. BASHINSKY. Export and domestic.

Mr. OATES. You buy and ship cotton?

Mr. BASHINSKY. Buy and ship cotton.

Mr. OATES. Do you know anything about the rates on the classes of goods about which Mr. Talbott has just been testifying?

Mr. BASHINSKY. Yes, sir.

Mr. OATES. State what you know.

Mr. BASHINSKY. Well, as I understood it, it did not seem to me to be very clear—the explanation made by Mr. Talbott in regard to the competition between Montgomery and Troy and Columbus and Troy for the trade belonging to the Troy territory. The Troy jobbing business can not compete with Columbus and Montgomery for the reason that if you take, for instance, Western goods shipped by Columbus jobbers via Columbus to Brantley, on first class would be 20 cents a hundred lower than these goods would be shipped from the West via Troy, notwithstanding that Brantley is 28 miles from Troy while it is 113 miles from Columbus.

255 Mr. OATES. State the facts to illustrate it.

Mr. BASHINSKY. The reason why this discrepancy exists is clear. If you take Columbus as a basis, running down to Brantley via Troy, Columbus

has a so much lower rate of freight from Western points than Troy has, that she can afford to ship down by Troy on the local rate much cheaper than Troy can do it on the local rate to Brantley.

Mr. OATES. If there is a difference in the local rates, state that.

Mr. BASHINSKY. The through rate from out West to Columbus is so much cheaper than the through rate from the West to Troy, that Columbus is able to ship 20 cents a hundred lower to Brantley via Troy than Troy is able to do it shipping from the West, on first-class goods, and other classes are in proportion.

Mr. OATES. That is to say, if a firm here makes an order on Louisville for a carload of goods to be shipped through to Brantley, and the wholesale merchant in Columbus makes an order on Louisville for a carload of the same goods to be shipped by way of Columbus to Brantley, that the Columbus shipper would get his goods laid down there 20 cents a hundred less than the Troy shipper would?

Mr. BASHINSKY. Exactly.

Mr. OATES. Can you tell where that discrimination comes in?

Mr. BASHINSKY. The discrimination mainly comes in on
256 account of the low rates from the West that Columbus has in preference to Troy, as this tariff here will show. First-class goods from the West to Columbus, \$1.03; to Troy, \$1.40; a difference of 37 cents a hundred.

Mr. OATES. What is the difference in distance?

Mr. BASHINSKY. 37 cents a hundred on first class lower than Troy, but when this same shipment of first-class goods is freighted down to Brantley the difference is narrowed down to 20 cents a hundred. 17 cents is the local rate out from Columbus to Brantley, making it then a difference of 20 cents a hundred.

Mr. OATES. The difference between Columbus and Troy?

Mr. BASHINSKY. Yes, sir.

Mr. OATES. Is there any difference in distance?

Mr. BASHINSKY. We are nearer to Brantley by 85 miles.

Mr. OATES. But from Louisville to Columbus, and Louisville to this place?

Mr. BASHINSKY. There may be a slight difference, but it is a matter of only five or six miles.

Mr. OATES. And there is a difference of 20 cents a hundred in favor of Columbus?

Mr. BASHINSKY. Yes, sir, and of other classes of goods in proportion. This is on shipments below Troy. The same differences exist on shipments above Troy into territory that Columbus divides with Troy, say, for instance, from here to Linwood, Inverness, and Boswell's Crossing.

257 Mr. OATES. That is on the Central, between this point and Columbus?

Mr. BASHINSKY. Yes, sir; first-class goods from the West via Columbus to Inverness, \$1.62; via Troy to Inverness, \$1.77½; from Columbus to Linwood from the West on first-class goods, \$1.62½; via Troy to Linwood, \$1.68½. Inverness is between Columbus and Troy—23 miles from Troy and 64 miles from Columbus. Linwood is 12 miles from Troy and 73 miles from Columbus. To the same extent what has been said about

Columbus applies also to Montgomery. It is not the intention of the Troy retailers to compete with the trade in Ozark or Brundridge, or the retailers of Brantley. The intention of Troy in trying to get lower rates is to compete with the wholesalers of Columbus and Montgomery.

Mr. WILEY. The defendants object to the putting in of any evidence as to the intention or purpose of the Troy merchants.

Mr. BASHINSKY. On goods shipped from the West via Montgomery to Ozark, first class is \$1.56; by way of Troy, \$1.76.

Mr. OATES. Over what line do you mean?

Mr. BASHINSKY. The distance from Troy to Ozark is 40 miles; from Ozark to Montgomery, 92 miles. At Dothan and points on the Alabama Midland, on first-class goods they reship via Montgomery for \$1.62; reship via Troy, \$1.88.

Mr. OATES. You mean reship from those points?

258 Mr. BASHINSKY. Reship via Troy and Montgomery. Montgomery merchants are able to ship first-class goods to Ozark at 20 cents per hundred less on first-class goods than Troy merchants from the West. Ozark is 40 miles from Troy; 92 miles from Montgomery. All goods shipped from Montgomery to Ozark have to pass through Troy. Montgomery can ship first-class goods to Dothan at 20 cents a hundred less than Troy. All goods shipped from Montgomery to Dothan must pass through Troy. Other classes in proportion.

Mr. OATES. Mr. Wiley, you can examine him on this and then I will examine him on another branch.

Cross-examination:

Mr. WILEY. You said just now that Montgomery merchants are enabled to ship goods from the West to Ozark on the Alabama Midland Railway at 20 cents per hundred pounds less than Troy merchants can ship the goods from the West. Do you mean to say that these goods are unloaded and reshipped at Montgomery and Troy, respectively, or that they go through from the West under unbroken seals to these particular points?

Mr. BASHINSKY. 20 cents a hundred on first-class goods either unloaded or in bulk. They are enabled to ship at 20 cents less, either in broken lots or entire cars.

259 Mr. WILEY. That is not my question. This is through freight you are speaking of, from the West?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. Do you mean to say that a merchant in Troy can go to Ozark and sell a carload of goods to be shipped directly from the West to Ozark—take Louisville, for instance—to be shipped through from Louisville, Ky., to Ozark and it would cost him 20 cents per hundred pounds on first-class goods more than it will cost the Montgomery merchant to make a like shipment under like circumstances?

Mr. BASHINSKY. No; that is not the statement that I made.

Mr. WILEY. Is that what you mean?

Mr. BASHINSKY. Yes, sir; that is exactly what I mean.

Mr. WILEY. Suppose the local freight originates or starts at Columbus, Ga., without any reference to the Western markets at all, do you undertake to say or mean to say that goods thus shipped from Columbus, Ga., would

be charged a higher rate to Troy than a like shipment from Columbus to Brantley?

Mr. BASHINSKY. You mean to say a higher rate to Troy——

Mr. WILEY. Than to Brantley?

Mr. BASHINSKY. That I did not state.

Mr. WILEY. Now, would a shipment of goods originating at Columbus, Ga., come to Troy at a less rate of freight than a like shipment would go to Brantley; and if so, what would be the difference?

260 Mr. BASHINSKY. Lower.

Mr. WILEY. How much less?

Mr. BASHINSKY. The local charges between Troy and Brantley.

Mr. WILEY. The discrimination of which Troy complains is on shipments from some Western point, St. Louis or Louisville, for instance, or any Western point. Now, I will ask if your complaint is not against the road to Montgomery and Columbus and not against the Alabama Midland and the Georgia Central?

Mr. BASHINSKY. The discrimination is to be charged to all the roads named, but mainly to the roads doing business in Troy, for the reason of charging their full local rate on goods shipped from Montgomery to Troy.

Mr. WILEY. Now, do you mean to say that Troy should be given a better local rate than is given to Ozark, for instance?

Mr. BASHINSKY. No; we do not claim anything about Ozark.

Mr. WILEY. Is not the local rate from Montgomery to Ozark more than from Montgomery to Troy?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. The through rate from Troy to any Western market would be made by adding the local rate from Troy to Montgomery plus the through rate from Montgomery to the West?

261 Mr. BASHINSKY. No; it is not made up that way. Take, for instance, Columbus, or take Eufaula, on shipments of goods from the West they do not pay the full local rate if the goods are shipped on a through bill of lading. On goods shipped on a through bill of lading from the West to Troy we have the full local rate from here to Montgomery instead of getting a through rate from Louisville to Troy.

Mr. OATES. That is true with respect to Columbus also?

Mr. BASHINSKY. The same thing.

Mr. OATES. In other words, the through rate is given to Columbus and Montgomery and *and* on the same freights when it comes on through to Troy it has the addition of the local rates from these points?

Mr. BASHINSKY. The full local rate.

Mr. WILEY. Is not that true as to Ozark and Dothan and Brantley and other points on the lines of these two roads?

Mr. BASHINSKY. Yes, sir; it is true to those two places.

Mr. WILEY. Then, to get satisfaction all along the line of the road, you have got to change the entire local rate between Montgomery and Columbus and other points on the lines of the roads. With what firm are you connected? In what business are you engaged here?

Mr. BASHINSKY. Cotton.

Mr. WILEY. What is the name of your firm?

Mr. BASHINSKY. L. N. Bashinsky & Co.

262 Mr. WILEY. Has that firm a branch house at Dothan, Ozark, or Brantley?

Mr. BASHINSKY. No, sir.

Mr. WILEY. You buy cotton in the city of Troy for the Troy Compress Company?

Mr. BASHINSKY. I have no compress here. I am only interested in it. I am a stockholder.

Mr. WILEY. You compress cotton here?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. Suppose a merchant in Ozark were to buy meat in St. Louis, for instance, and the same is shipped by either Columbus or Montgomery to Ozark, how much higher would be the charge per hundred pounds than on a like through shipment to Troy?

Mr. BASHINSKY. 12 cents per hundred higher on Troy.

Mr. WILEY. I say, suppose a merchant living in Ozark were to buy meat in St. Louis, for instance, and have a through shipment, through via Columbus or Montgomery to Ozark, how much higher would be the freight on that shipment to Ozark than on a like shipment from the same point to Troy?

Mr. BASHINSKY. It would be four cents higher.

Mr. GARDNER. Suppose that a Troy merchant should order a carload of meat from St. Louis to Brantley. That would be shipped to him just as if a Montgomery merchant were to order it? Suppose a Troy merchant were to order a carload of meat from Louisville to Brantley and get a through bill of lading. They would ship it just as they would ship

263 a like order for a Montgomery merchant?

Mr. BASHINSKY. Yes, sir; it would be the same rate if shipped through, but if it is reshipped it would be more.

Com'r CLEMENTS. Suppose a Troy merchant orders from Louisville to be shipped to Brantley, could he not get it shipped there at the same rate as the Columbus man who orders it?

Mr. BASHINSKY. The same rate exactly.

Mr. OATES. What was it you stated awhile ago about its being more at Troy?

Mr. BASHINSKY. If the goods are reshipped and rehandled at these respective places it would be different.

Mr. OATES. Then, what is the complaint from Columbus to Brantley?

Mr. BASHINSKY. The difference from Columbus to Brantley is 10 cents a hundred. It is 54 if rehandled from Columbus, and from Troy 64.

Mr. OATES. Does it make any difference where the meat comes from? If you found the meat there in Columbus, the rate would be what?

Mr. BASHINSKY. It would be the local rate. The main difference comes in in regard to the rates from the West. The rates to Columbus from the West are so much lower than they are to Troy that they can get goods shipped so much cheaper than we are able to get them shipped here that they are able to undersell us about 10 cents a hundred.

264 Com'r CLEMENTS. Why can not a Troy merchant order a carload of meat from Louisville, to be shipped by way of Columbus to Brantley, and put it there at the same rate?

Mr. BASHINSKY. For the reason that he may not be able to sell an entire carload. He would have to ship a carload of meat to every little point on the road in order to compete with Columbus.

Mr. OATES. Suppose that some man is doing business in Columbus and orders and ships a carload of meat to Columbus and a carload of meat here, what would be the difference in his shipment of a part of that to Brantley from the two different points?

Mr. TALBOFF. From Louisville to Troy is 50 cents.

Mr. OATES. Is there anything in that that you complain of?

Mr. BASHINSKY. The complaint is that the rate out West—

Mr. OATES. But I am talking about Columbus and Troy, respectively, to Troy.

Mr. BASHINSKY. No; there is not complaint as to that.

Mr. OATES. Your complaint is that the through rates on that class of freights from the West to Columbus and Montgomery, respectively, are such that on shipments to Troy and Brantley from those points on reshipment that the merchants at those points are able to put down goods cheaper in

Brantley than the Troy merchant can by adding the full local rates, 265 they having received the good' and charged the through rates to this point?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. And our answer to that is that Troy, Columbus, and Montgomery are not similarly situated.

Redirect examination :

Mr. OATES. Will you go into the matter of the shipment of cotton to the seaboard? What complaint is there now on shipments from here via Montgomery to New Orleans? It is charged that rebates are given in the complaint.

Mr. BASHINSKY. We have no cause for making complaint this year in regard to rebating and rate cutting. It existed last year when this petition was made.

Mr. OATES. Then you have abandoned that?

Mr. BASHINSKY. As regards rebating and cutting of rates, yes, sir.

Mr. OATES. Just explain clearly in regard to the complaint on shipments to the seaboard of cotton.

Mr. BASHINSKY. The rates of freight as complained of in this petition have since been modified. Heretofore the rate had been from Troy to the ports of Brunswick and Savannah 47 cents, while from Montgomery the rate had been 40 cents, giving Montgomery an advantage of 7 cents per hundred. In the meantime the rate has been raised in Montgomery to 45 cents and the rate in Troy of 47 cents has been retained, making a difference of two cents a hundred instead of seven cents as heretofore.

266 Mr. OATES. For the shorter distance?

Mr. BASHINSKY. Ours is the shorter distance, and we have a higher rate than Montgomery. It is 52 miles nearer.

Mr. WILEY. That is a fact, and we reply that they are not similarly situated.

Mr. OATES. Now, make a statement also about shipments through to other points and foreign ports.

Mr. BASHINSKY. The Alabama Midland Railroad, as well as the Central, refuses to give to Troy the through rate to New Orleans; that is, they charge a full local rate of 23 cents per hundred from here to Montgomery, and from Montgomery to New Orleans the regular through rate of 63 cents, giving Montgomery an advantage of 18 cents per hundred.

In this way Troy is cut off in the shipment of cotton to New Orleans and shipments to Europe. This is a great disadvantage. All cottons shipped via New Orleans to Europe, passing to any European markets, are called "New Orleans cottons," which are valued in foreign ports at from $\frac{3}{32}$ nds to $\frac{1}{4}$ th of a penny or $\frac{3}{16}$ ths to $\frac{1}{4}$ th of a cent of American money over other cottons, which gives Montgomery an advantage to that extent over Troy.

Mr. OATES. Now, make a statement as to shipments to Europe by way of Eastern ports.

Mr. BASHINSKY. We have a complaint to make against the Alabama Midland Railroad and the Central Railroad in refusing to admit Troy
267 into the jurisdiction of the Southern Railway and Steamship Association. The Southern Railway & Steamship Association is a combination of railroads that equalizes the rate of freight to Southern ports. For instance, this being the Atlantic Coast, there is West Point, Norfolk, Charleston, Savannah, and Brunswick, Montgomery being the center. On the railroads leading from this point to all these different ports, the rate from Montgomery to West Point is 50 cents; to Norfolk, 50 cents; to Charleston, 45 cents; Savannah, 45; Brunswick, 45. The rate from West Point to Liverpool would probably be 30 cents; Norfolk, 30 cents; Charleston, 48; Savannah, 48; Brunswick, 48, making it a combination of 80 cents, 80 cents, and \$1.03 (these are imaginary figures), \$1.03, \$1.03, \$1.03. These are equalized, and Montgomery can ship through any of these ports at the lowest rate existing on that day, say 80 cents, via Brunswick, Savannah, and Charleston. This is refused to Troy. This is giving Montgomery an advantage at times of from 10 to 15 cents per hundred.

Mr. OATES. State about the local rates.

Mr. BASHINSKY. Starting out from Montgomery to the port of Savannah, for instance, the rate is forty cents per hundred 7 miles beyond Montgomery toward Savannah—between Montgomery and Troy, east of Montgomery. For instance, Dermid, a point 7 miles east of Montgomery, the rate is 51 cents; from Snowdown, a distance from Montgomery of 11
268 miles, the rate to Savannah is 53 cents; Le Grand, a distance from Montgomery of 17 miles, the rate to Savannah is 54 cents; and this rate continued until Troy is reached, when the rate from Troy is lowered to 47 cents. Now, here is a table of explanation which shows that last year when the rate of freight from Montgomery was 40 cents, it was cheaper to ship from these points to Savannah via Montgomery than from these points direct to Savannah.

Mr. OATES. And when they shipped by Montgomery it would come back by these points?

Mr. BASHINSKY. Yes, sir; it would come back by these very points. Now, take, for instance, the point of Ada, which is 21 miles east of Montgomery and so much nearer to Savannah. The rate to Savannah was 54 cents. The rate to Montgomery was 14 cents. So when reshipping this cotton via Montgomery the rate was the same as if it was shipped from Ada direct to Savannah.

Mr. OATES. How much would it cost to ship from Ada back to Montgomery?

Mr. BASHINSKY. 14 cents.

Mr. OATES. How much from Montgomery to Savannah?

Mr. BASHINSKY. 40 cents.

Mr. OATES. How much from Ada to Savannah?

Mr. BASHINSKY. 54 cents; it cost the same via Montgomery as direct.

On the other hand, if cotton was shipped from any of these stations to Liverpool, as from Ada, the cost would be from Ada to Savannah, 54 cents; from Savannah to Liverpool, 56 cents; total,

269 \$1.10. During the past season, when the ocean rate was 56 cents from Savannah, Montgomery had a through rate to Liverpool of 90 cents, so that when the cotton was shipped from Ada to Montgomery, and from Montgomery to Liverpool, the rate would be 90 cents and 21 cents, or \$1.01 a hundred, or 9 cents a hundred less than if the cotton was shipped direct from Ada to Liverpool. Now compare this with Troy. The rate from Troy to Savannah is 47 cents a hundred and remains 47 cents at all stations east of Troy as far as Dothan, no matter how small that station, whether a flag station of any other station, and in this way Troy is not able to control the business in its own territory. Now, for instance, you take a place the same distance as Ada, which is 21 miles. Tennille is 24 miles, nearly the same distance east of Troy as Ada is east of Montgomery. Tennille being 24 miles east of Troy and standing in about the same relation with Troy as Ada to Montgomery, the rate from Tennille is 47 cents; the rate from Tennille to Troy is 14 cents; the rate from Troy to Savannah is 47 cents. If Tennille would ship cotton to Troy and reship it to Savannah the expense would be 61 cents, or 14 cents per hundred higher as compared with Ada that gets the same rate on shipping cotton to Savannah via Montgomery as if shipped from Ada direct. In this manner trade belonging to Troy territory west of Troy, between Troy and Montgomery, is drawn to Montgomery, and east of Troy it is drawn to the ports.

270 Mr. OATES. In other words, that it treats Troy just as if does the smallest of these stations?

Mr. BASHINSKY. Precisely.

Recross-examination:

Mr. WILEY. How many cotton buyers are there in Troy?

Mr. BASHINSKY. Three.

Mr. WILEY. Will you please name them?

Mr. BASHINSKY. L. N. Bashinsky & Co., of which I am a member; Charles Henderson & Company; J. B. Holst & Company.

Mr. WILEY. Would the people generally, or these cotton buyers in particular, be benefitted by what you term a through rate to Troy?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. Which, the people or you?

Mr. BASHINSKY. They would be benefitted in the way that we would be able to control more cotton.

Mr. WILEY. Which would, the people or the firms you have named?

Mr. BASHINSKY. The people, by getting better prices for the cotton.

Mr. WILEY. Does cotton command the same price at Troy as in Montgomery?

Mr. BASHINSKY. No, sir.

271 Mr. WILEY. What is the difference, generally, on an average, of the market price of cotton in the two places?

Mr. BASHINSKY. This year or last?

Mr. WILEY. This, the present season?

Mr. BASHINSKY. There has not been any great difference this season. Last season when the complaint was made, the difference was as much as $\frac{1}{2}$ or $\frac{3}{4}$ ths of a cent a pound.

Mr. WILEY. What is it now?

Mr. BASHINSKY. It is narrowed down to $\frac{1}{16}$ th of a cent.

Mr. WILEY. What makes the difference now?

Mr. BASHINSKY. The difference is due to the fact that Montgomery is able to ship it via New Orleans and sell it as New Orleans cotton in Europe.

Mr. WILEY. Is not this difference attributable somewhat to the superior presses in Montgomery, to water competition and superior and more numerous transportation facilities at Montgomery than Troy?

Mr. BASHINSKY. Starting at compressing first, there is no difference as far as that is concerned. The rate there is not higher on account of compressage.

Mr. WILEY. What do you say about water competition?

Mr. BASHINSKY. The river competition plays no great part. The Alabama River goes to Mobile, but Mobile is no great cotton market.

272 Mr. WILEY. You do not mean to say they do not ship large quantities of cotton down the Alabama River?

Mr. BASHINSKY. The railroads are the main factor in transporting cotton nowadays.

Mr. WILEY. Does not water transportation or river transportation cut some figure in it?

Mr. BASHINSKY. It does.

Mr. WILEY. Well, then, they have more numerous transportation facilities at Montgomery than Troy, have they not?

Mr. BASHINSKY. In what way?

Mr. WILEY. A large number of railroads and a greater volume of goods.

Mr. BASHINSKY. They have only two railroads that enter Atlantic ports.

Mr. WILEY. Which are they?

Mr. BASHINSKY. The Savannah, Florida & Western, and the Central of Georgia.

Mr. WILEY. You mean enter the ports directly?

Mr. BASHINSKY. Yes, sir.

Mr. WILEY. Do you mean to say that cotton taken by the Savannah, Americus & Montgomery, and the Western of Alabama, and the Louisville & Nashville do not strike Atlantic ports at all?

273 Mr. BASHINSKY. I do not speak of Gulf ports at all, but only Atlantic ports. The Louisville & Nashville does not strike Atlantic ports.

Mr. WILEY. But a great deal of cotton goes out the Eastern seaboard down by Jesup.

Mr. BASHINSKY. Something may be done that way.

Mr. WILEY. You do not mean to say that Troy is as big as New York?

Mr. BASHINSKY. No.

Mr. GARDNER. Is there any competition between buyers here?

Mr. BASHINSKY. No.

Mr. GARDNER. L. N. Bashinsky is a member of the bank here?

Mr. BASHINSKY. Yes, sir.

Mr. GARDNER. Does the bank here give the same accommodations to Holst & Co.?

Mr. BASHINSKY. Exactly.

Mr. GARDNER. The same rate of exchange?

Mr. BASHINSKY. Yes, sir; and the same rate of interest.

Mr. GARDNER. Is there no understanding among the cotton buyers? Have they not pooled?

Mr. BASHINSKY. No, sir.

Com'r CLEMENTS. You stated a moment ago in your testimony that the comparisons you have just made as to rates from Montgomery to the seaboard and from Troy to the seaboard were based on rates in existence last year?

Mr. BASHINSKY. Yes, sir; existing last year.

274 Com'r CLEMENTS. Does the same discrimination hold good now, and if not, to what extent has it been modified?

Mr. BASHINSKY. It has been modified to the extent of five cents per hundred.

Com'r CLEMENTS. As between shipments from Troy and Montgomery, respectively, to the seaboard?

Mr. BASHINSKY. Yes, sir.

Com'r CLEMENTS. Does the difference of five cents a hundred affect all these places you referred to?

Mr. BASHINSKY. The local rates have not been changed, but in the case of reshipment via Montgomery—

Com'r CLEMENTS. Montgomery has been put five cents higher; that is the only change?

Mr. BASHINSKY. That is the only change that applies to cotton.

Mr. OATES. I want you to explain what first-class goods in those tables mean.

Mr. BASHINSKY. We have not dwelt upon the discrimination from the East on dry goods and notions—first-class goods.

Mr. OATES. State what constitutes first-class goods, and then state the discriminations.

Mr. BASHINSKY. Dry goods and notions are first class. From Baltimore to Troy the rate is \$1.28; to Montgomery, \$1.27. Troy is 52 miles nearer to Baltimore than to Montgomery. From New York to Troy is \$1.36; to Montgomery, \$1.14.

275 Mr. OATES. In regard to the shipment of first-class goods which you have just spoken of, you mean all-rail shipments, or do you mean partly by rail and partly by water?

Mr. BASHINSKY. Partly by water and partly by rail.

Mr. OATES. Coming by way of Savannah?

Mr. BASHINSKY. Coming by way of Savannah. They are brought by the Occa' Steamship Company, which is controlled by the Central Railroad of Georgia.

Mr. OATES. The shipments comes from Savannah by the railroads to Montgomery and to Columbus and to this place. They all come the same way?

Mr. BASHINSKY. Yes, sir.

Mr. OATES. Are there any shipments from the East that come by the way of the Alabama River at all?

Mr. BASHINSKY. No, sir; none that I ever heard of on first-class goods.

Mr. OATES. Or the Chattanooga' River?

Mr. BASHINSKY. No.

It was agreed among counsel that each side should within two weeks from the date of the taking of this testimony file an affidavit with the Commission setting forth the volume of business of Troy and Montgomery, respectively, and also the number of inhabitants of each city.

Thereupon at five o'clock p. m. the taking of testimony was closed.

277

Before the Interstate Railroad Commission.

THE BOARD OF TRADE OF TROY

vs.

THE SAVANNAH, FLORIDA & WESTERN RY. CO. ET AL.

THE STATE OF ALABAMA, *Montgomery County*:

Before me, S. W. Mitchell, a notary public in and for said county and State, personally appeared M. B. Houghton, H. M. Hobbie, and W. F. Vandiver, known to me, who being duly sworn, depose and say, that the estimated population of the city of Montgomery, within the police jurisdiction of said city, is 33,000. The distance to the nearest coal field is about 60 miles. There are 563 mercantile and industrial firms in said city, while the capital invested in manufacturing and industrial enterprises is \$3,000,000.00 and the value of manufactured products is \$4,000,000.00. The volume of business done in any given year within the corporate limits of said city is \$40,000,000.00.

The railroads concentrating in the city of Montgomery are the South and North Alabama R. R., and the Mobile & Montgomery Railway, constituting the L. & N. system; the Alabama Midland Railway and the Luverne Extension, constituting a part of the Plant system; the Savannah, Americus & Montgomery Railway; the Western Railway of Alabama, embracing both the West Point and Selma divisions; and the Montgomery & Eufaula R. R., constituting a part of the Georgia Central System. These various railroads run from a common center, like the spokes of a wheel, to wit: North, northeast, east, southeast, south, southwest, west, and northwest. The Montgomery, Tuscaloosa and Memphis Railroad is
278 under process of construction, and when completed will bring the city of Montgomery into close contact with the coal fields of Alabama.

Montgomery is situated at the head of navigation of the Alabama River, reaching by water and rail transportation six great Gulf and Atlantic ports.

Tonnage for the year 1892, ending March 1st, 1892, received by various railroads at Montgomery proper, was 18,829,877 lbs. Tonnage of West and Southwest freight received for this city and connections, during said year was 647,880,688 lbs., or 21,596 carloads.

Montgomery is the capital of Alabama, and the place of residence of the State officials—an historic city, which is visited by many thousand

people every year. It has a large number of public buildings, amongst them being the State house, Federal court room, post-office, land office, etc. There are also three large compresses in said city.

The business on the Alabama River, according to the report of the United States engineer, for the year 1891 was 52,349 bales of cotton carried by boat and 44,500 tons of other freight. The value of the commerce on the Alabama River for that year (1891) was \$8,175,650.00.

There are three cotton factories in and near Montgomery, owned and controlled by persons residing near, and the products of which are transported from Montgomery. These factories employ hands to the number of 1,200, and consume cotton to the amount of 18,000 bales. Montgomery has 41 manufacturing and industrial enterprises of various kinds, employing total number of 2,700 hands.

The cotton received for the year 1891 amounted to 165,000 bales, while the cotton compressed for said year was 156,324 bales.

279 There are twenty-one wholesale firms who buy from the West, and 11 wholesale firms who buy from the East. Montgomery is entitled to the trade of and reaches points in southwest Georgia, Florida, central and south Alabama and west Mississippi.

The Alabama River is navigable all the year round from Montgomery to Mobile, a distance of 410 miles. There are three lines of steamers plying between Montgomery and Mobile, and operating the boats "Tinsie Moore," "Alto," "Nettie Quill," and "Carrier."

The facts herein above set out and contained are obtained from the best sources accessible to affiants and are regarded as trustworthy and reliable; and these facts affiants believe to be true and correct.

M. B. HOUGHTON,
Pres. Commercial & Industrial Association.

H. M. HOBIE,
Pres. Wholesale Grocers' Exchange.

W. F. VANDIVER,
Chairman Freight Committee.

Sworn to and subscribed before me this 26 day of November, 1892.

[SEAL.]

S. W. MITCHELL,
Not. Pub., M. County.

	Volume of business.
1. Chas. Henderson Grocery Company, groceries.....	\$200,000
2. J. P. Wood & Bro., kitchen furniture.....	32,000
3. W. K. Cameron, furniture.....	12,000
4. H. D. Boyd, musical instruments.....	5,000
5. Stevenson & Zachary, general merchandise.....	15,000
6. Carroll & Murphree, general merchandise.....	125,000
7. F. L. Zimmerman, jewelry.....	1,500
8. Mrs. Motes, millinery.....	5,000
9. A. F. McBryde, general merchandise.....	35,000
10. J. M. Collier, drugs.....	45,000
11. Joseph Mittenthal, dry goods.....	12,000
12. V. D. Jones, general merchandise.....	35,000
13. Solomon & Wyzinsky, dry goods and clothing.....	12,000
14. A. E. Jolly, tinware.....	5,000
15. E. Singer, groceries.....	4,000
16. William Murphree, groceries.....	4,000

	Volume of business
17. Chas. Williams, fruits.....	\$4,000
18. W. H. Holloway, general merchandise.....	15,000
19. B. Courshaun, clothing.....	11,000
20. James Walters, general merchandise.....	30,000
21. H. S. Gilmore & Co., whiskey.....	40,000
22. J. S. Youngblood & Sons, general merchandise.....	18,000
23. C. L. Brannen & Son, general merchandise.....	75,000
24. T. K. Brantley & Son, general merchandise.....	75,000
25. Morris & Stewart, whiskey.....	20,000
26. J. R. Brown, hardware.....	28,000
27. Cowart & Co., kitchen goods.....	20,000
28. H. Solomon, dry goods.....	15,000
29. M. J. Ross, general merchandise.....	50,000
30. Henderson Bros. & Co., general merchandise.....	150,000
31. J. S. Copeland, general merchandise.....	35,000
32. G. B. Jolley, tinware.....	3,000
33. Goldthwaite & Son, drugs.....	15,000
34. Key Murphree & Co., groceries.....	20,000
35. M. Connor, general merchandise.....	40,000
36. Mrs. Seals, millinery.....	4,500
282 37. D. Williams, groceries & fruit.....	20,000
38. Clark & Son, general merchandise.....	15,000
39. C. L. Widham, groceries.....	24,000
40. G. W. Andrews, drugs.....	5,000
41. F. S. Wood, furniture.....	30,000
42. W. S. Coleman, general merchandise.....	16,000
43. Chas. Cox & Thornton, dry goods.....	15,000
44. Holloway & White, drugs.....	30,000
45. Gellerstedt Bros., clothing & gents furnishing.....	50,000
46. Fox Henderson, millinery & dry goods.....	22,000
47. Knox & Siler, books & stationery.....	8,000
48. C. B. Douglas, jewelry.....	5,000
49. Wright & Peters, millinery & dry goods.....	6,500
50. Jacob Seeligman, dry goods.....	10,000
51. Rainer Bros., general merchandise.....	85,000
52. W. A. Sims, grocery.....	25,000
53. J. J. McClure, general merchandise.....	9,000
54. Hamil Bros., general merchandise.....	25,000
55. J. R. Darby & Son, general merchandise.....	19,000
56. C. L. Burnett, whiskey.....	20,000
57. Folmar & Sons, fertilizers.....	100,000
58. W. A. Austin, groceries.....	6,000
59. L. Jackson, hides & leather.....	12,000
60. C. L. Matthews, restaurant.....	10,000
61. A. L. Ansley, groceries.....	10,000
62. T. J. Giglio, groceries.....	4,000
63. Geo. Chapman, groceries.....	6,000
64. La Roche & Spear, groceries.....	4,000
65. J. D. Sikes, whiskey.....	35,000
66. Klawansky Bros., dry goods & notions.....	18,000
67. C. H. Allison, millinery & dry goods.....	25,000
68. D. R. Wright, notions.....	15,000
69. Brantley & Edmonson, general merchandise.....	45,000
70. McEchron, Knox & Co., hardware.....	50,000
71. Chas. Goldenberg, dry goods.....	20,000
72. J. M. Seals, general merchandise.....	6,000
73. W. T. Owens, general merchandise.....	2,000
Total amount.....	2,023,500

283 In addition to list on pages I and II there are a number of small dealers not included in the statement.

Following are the different industries, with their respective capital, capacity, volume of business, and number of hands employed:

Troy Fertilizer Company. Paid-up capital, \$150,000, manufacturers of acid phosphate, fertilizers, oil, and cake. They have shipped from

Troy during 1891-1892 150,000 gallons of oil, 4,000 tons of fertilizer, outside of their annual sales in the local markets of Troy, which amount to \$250,000. They employ 100 hands.

The Henderson Knitting Mills. Paid-up capital, \$30,000. They manufactured in 1891 18,000 doz. knit garments, valued at \$65,000. Their goods are shipped to Northern markets. They employ 60 hands.

The Troy Compress Company. Paid-up capital, \$50,000. They compressed in season 1891-1892 over 37,000 bales of cotton. Their capacity is 1,800 bales per day. They employ 27 hands.

Troy Iron Works. Paid-up capital, \$10,000. They do a good business in south Alabama and in western Florida.

Troy Ice Factory. Paid-up capital, \$20,000. They supply Troy and all stations and towns on the Alabama Midland Railroad.

Planing mill and furniture factory. Paid-up capital, \$20,000. Their annual business, \$35,000.

Electric light owned by the city government of Troy.

Troy's banking capital, \$500,000.

Troy is the seat of the State Normal College of the State of Alabama.

281 Following are the coal dealers at Troy, Ala.:

B. M. Talbot & Co.		
P. H. Baker & Son	5,000 tons steam coal @ \$3.....	\$15,000
J. O. Brown	1,500 " domestic 6.....	9,000
L. Hendrick		

Fertilizers shipped to Troy by the following houses engaged in the fertilizer business at Troy:

W. F. Beard.....	\$15,000
Folmar & Sons.....	75,000
Rainer Bros.....	10,000
T. K. Brantley & Son.....	10,000

Wagons and buggies:

Henderson & Rainer.....	12,000
Rainer Bros.....	8,000

Dealers in mules: Henderson & Rainer, Carrol & Murphree, Henderson & Chastain. Cotton houses: L. M. Bashinsky & Co., exporters and shippers to Eastern mills. Among their exports last season they shipped to Japan 300 b's. Chas. Henderson & Co., exporters and shippers to mills. J. B. Holst & Co., exporters and shippers to mills.

285 *Recapitulation of statement of business done at Troy, Ala.*

Receipts of 38,500 bales of cotton, aggregating	\$1,500,000
Amount of merchandise sold	2,023,500
" " live stock	100,000
" " fertilizers shipped and sold exclus' of sales made by the Troy factory	110,000
Amount of buggies and wagons sold	20,000
" " steam and domestic coal	24,000
" " business of Troy's enterprises, valued	500,000
Cash loans to farmers and merchants by money lenders and by bank	600,000

Grand total, not including a number of small dealers..... 4,877,500

There are published in Troy two weekly newspapers.

286 THE STATE OF ALABAMA,
The City of Troy, Pike County:

I, W. R. Lane, a notary public, hereby certify that F. M. Pennington, a member of the Board of Trade of Troy, Ala., came before me and stated that he personally obtained from the business men of Troy, Ala., the foregoing facts, setting forth the industries of Troy and the volume of business, and that the same are true and correct to the best of his knowledge and belief.

F. M. PENNINGTON.

Given under my hand and seal this 2 day of Jan'y, 1893.

[SEAL.]

W. R. LANE, *Notary Public*.

THE STATE OF ALABAMA,
The City of Troy, Pike County:

I, W. R. Lane, a notary public, hereby certify that J. D. Murphree, pres't of the Board of Trade of Troy, came before me, and, being sworn, stated that he carefully examined the foregoing statements, and that he finds them correct, to his best knowledge and belief.

JOEL D. MURPHREE.

Given under my hand and seal this 2d day in Jan'y, 1893.

[SEAL.]

W. R. LANE, *Notary Public*.

287 (Indorsed:) Statement of volume of business done at Troy, Ala., compiled by the Board of Trade of Troy for the Interstate Commerce Commission, Washington, D. C.

287½ Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF TROY, ALABAMA,	} No. 347.
vs.	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, hereby certify that the foregoing is the evidence and testimony in the above entitled cause before said Commission and that the same is complete without addition thereto or diminution thereof or alteration in any particular.

Witness my hand and seal of office this the 15th day of November, A. D. 1894.

[SEAL.]

EDW. A. MOSELEY,
Secretary.

288 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
vs.	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

The complainant in the above-entitled cause files, in pursuance of the order of said court made July 25, 1894, the following interrogatories to

be propounded to E. H. Bashinsky, Oliver C. Wiley, Charles Henderson, Charles B. Goldthwaite, H. B. Cowart, J. B. Corcoran, L. N. Bashinsky, J. W. Nall, B. M. Talbott, Joel D. Murphree, J. E. Henderson, who reside in Troy, Ala.:

1st interrogatory. What is your name, place of residence, and in what business are you engaged? How long have you so resided and been engaged in such business?

2nd interrogatory. When cotton is shipped from Troy via Montgomery to New Orleans how is it shipped, in carloads or less than carloads, compressed or uncompressed? State, if you know, whether or not it is carried on from Montgomery in the same cars in which it is shipped at Troy, or is it transferred at Montgomery to cars on the Louisville & Nashville road. Is there any extra expense to the roads at Montgomery, and if so, what? What does this expense, if any, amount to per 100 lbs. or per bale?

3rd interrogatory. When class goods are shipped through from Louisville, Cincinnati, St. Louis, and other Ohio River points via Montgomery to Troy, are they or not shipped under a through bill of lading from those cities to Troy for an aggregate through rate? State, if you know, whether there is a transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the roads of the Georgia Central or Alabama Midland companies. What extra expense, if any, is incurred by the roads at Montgomery on such shipments? How do the terminal expense at Troy on such through shipments to Troy compare with the terminal expenses at Montgomery on through shipments from said cities to Montgomery? Are those terminal expenses at Troy greater or less than or the same as at Montgomery?

4th interrogatory. What is the population of Troy? Give a full and detailed statement of Troy's mercantile, manufacturing, and other industrial enterprises, and of her transportation and other facilities. What is the character of the territory naturally tributary to Troy, and the population of said territory?

5th interrogatory. Is the city of Opelika, Ala., on any navigable stream or body of water?

6th interrogatory. (To all the witnesses except J. B. Corcoran & J. W. Nall.) What effect have the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on your business and the business of Troy in towns and in territory around Troy, and on the line of the Alabama Midland and the Georgia Central (Mobile & Girdard) roads? Give names of places and details.

7th interrogatory. (To all the witnesses except J. B. Corcoran & J. W. Nall.) Have you ever visited Apalachicola, Florida? If so, when, and how long did your visit last? What character of vessels can enter the harbor at Apalachicola? Can vessels which sail from Apalachicola to Mobile or New Orleans, or around Florida Keys to Atlantic ports enter said harbor? How would goods have to be transferred from or to a river boat at Apalachicola from or to an ocean or Gulf vessel? How far would they have to be carried from or to the river boat from or to the Gulf or ocean vessel, and on what kind of a vessel? Are groceries shipped by river from or to Columbus or Eufaula via Apalachicola from or to Mobile, New Orleans, or Atlantic ports? Did you see

any evidence of such, or any through business at Apalachicola from or to such cities or ports? Is the route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, and St. Louis, and to New York and Northeastern cities a practicable route for through business, and if so, for what kind of through business? Is not the harbor at Apalachicola used mainly, if not exclusively, for the lumber business? State fully what you saw while at Apalachicola indicating the character and extent of shipments, if any, from or to Apalachicola on the Gulf or ocean, and the class of vessels serving that port. Did you see any Gulf or ocean steamers there inside or outside the harbor?

8th interrogatory. (To all the witnesses except J. B. Corcoran & J. W. Nall.) If the rates from the East to Troy and other stations on the Alabama Midland Railway east of Montgomery were fixed or adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, what effect would it have in increasing or diminishing the tonnage of traffic hauled to Troy and such other stations? Would the aggregate revenue of the road be increased or diminished by such a readjustment of rates?

9th interrogatory. (To all the witnesses except J. B. Corcoran & J. W. Nall.) Is there any material difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Columbus, and Opelika, on the one hand, and Troy, on the other? If so, what? Is there any such difference as justifies the present excess of the Troy rates over those of such other cities?

291 10th interrogatory. (To all the witnesses except J. B. Corcoran & J. W. Nall.) Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to either of the parties to this cause, or that may be material to the matters in question in this cause? If so, set forth the same fully and in detail.

H. D. CLAYTON,
U. S. Atty.
WM. C. OATES,
L. A. SHAUER,
Attys. for Petitioner.

292 (Indorsed :) No. 158. U. S. circuit court mid. dist. of Ala.
The Interstate Commerce Commission vs. The Alabama Midland Railway Co. et als. Interrogatories by complainant to E. H. Bashinsky, Oliver C. Wiley, Charles Henderson, Chas. B. Goldthwaite, H. B. Cowort, J. B. Corcoran, L. N. Bashinsky, J. W. Nall, B. M. Talbott, Joel B. Murphree, J. E. Henderson, and J. E. Grady. Filed the 31st day of August, 1894. J. W. Dimmick, clerk.

293 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
vs.	
THE ALABAMA MIDLAND RAILWAY ET ALS.	

The defendants in the above-entitled cause, reserving the right to present and insist upon before the court all legal objections to the direct inter-

rogatories propounded on behalf of the 'plainant, filed in pursuance to the order of said court, made July 25th, 1894, files the following cross-interrogatories to the following witnesses, to wit: E. H. Bashinsky, Oliver C. Wiley, Charles Henderson, Charles B. Goldthwaite, H. B. Cowart, L. N. Bashinsky, B. M. Talbert, Joel D. Murphree, J. E. Henderson, J. B. Corcoran, and J. W. Nall, who reside at Troy, Alabama.

First cross-interrogatory. If, in answering the second and third direct interrogatories, you make your answer from hearsay, or from the course of business, or from any source except your own personal knowledge, state what part of your answer is made from any other source of information than your personal knowledge; state fully and particularly. Have you, or either of you, ever had cotton shipped from Troy via Montgomery to New Orleans? How do you know it was carried in the same cars in which it was shipped from Troy to Mobile? Are you able to state of your own personal knowledge whether or not any extra expense to the roads at Montgomery is incurred? If so, state the sources of your information. State fully and particularly. Have you, or either of you, had class goods

shipped from Louisville, Cincinnati, or St. Louis, or upon other Ohio
294 River points via Montgomery to Troy; and are you able to state of your own personal knowledge that the goods so shipped from Ohio River points to Troy via Montgomery under a through bill of lading have an aggregate through rate? Do you answer this question of your own personal knowledge or from hearsay? If not of your own personal knowledge, state fully and particularly your sources of information. Are you able to state, of your own personal knowledge, or from hearsay, whether or not there is a transfer of such freight at Montgomery from the cars in which freight is brought to that city to the cars on the road of the Georgia Central or Alabama Midland companies; or what expense, if any, is incurred by the roads at Montgomery on such shipments by the Central & Alabama Midland Railroad between Montgomery and Troy? If you do not answer of your own personal knowledge, state the sources of your information and whether or not your answer is based on knowledge, conjecture, or hearsay. Do you know anything of your own personal knowledge of the terminal expenses at Troy on such through shipments to Troy in comparison with the terminal expenses at Montgomery on such through shipments from said cities to Montgomery? Do you answer this question of your own personal knowledge, or from hearsay, or upon conjecture? Answer fully and particularly.

Second cross-interrogatory. What is the population of Troy, as shown by the last census? State the number of mercantile houses in the city of Troy; how many wholesale merchants and how many retail merchants; how many merchants buy goods from the East and how many from the West. What is the volume of trade of Troy in any given year? Is your answer to this last question on knowledge, conjecture, or hearsay? How many bales of cotton were received in Troy during the year 1893? How many manufacturing enterprises are there now in the city of Troy?

State fully and particularly. How many hands are employed
295 in said manufacturing enterprises? State fully and particularly the number of industrial enterprises that are situated in said city, the amount of capital invested therein, and the number of persons employed by them? How much capital is invested in the mercantile, manufacturing, and other industrial enterprises in the city of Troy? Answer fully and

particularly. How far is Troy from the city of Columbus and from Eufaula and what is the distance from Troy to Montgomery? What is the distance from Troy to Luverne, on the Alabama Midland; what is the distance to Brantley, on the Mobile and Girard? What is the distance from Troy to Ozark, and also to Dothan and Eufaula, respectively, by rail? Give all these distances as by rail. How many more manufacturing, mercantile, or industrial enterprises are in the city of Troy to-day than were there at the time the Board of Trade of Troy filed a petition complaining of the rates before the Interstate Commerce Commission? Answer fully and particularly. How many, more or less, manufacturing, mercantile, or industrial enterprises are there now, in 1894, than were in the city of Troy during the year 1890? Answer fully and particularly.

Third cross-interrogatory. If, in answer to the sixth direct interrogatory, you undertake to state what effect the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy have had on your business and on the business of Troy, and in town in the territory around Troy, and along the lines of the Alabama Midland and the Georgia Central roads, state if a change of rates, as prayed for by the Board of Trade of Troy to the Interstate Commerce Commission, should result in a revision of the rates to Dothan, Ozark, Brantley, Searight, and the other intermediate stations, so as to make the rates to said intermediate stations correspondingly low, what would be the effect on your business

and the business of Troy, and of said intermediate stations, and the
296 territory around Troy, and on the lines of the Alabama Midland and the Georgia Central railroads. Is it not a fact that the Georgia Central Railroad, known as the Ozark extension, and the Alabama Midland Railroad make Ozark a competitive point? Is it not a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark extension, are located within a half or three-quarters of a mile of each other, so that, practically, said places are competitive points? Is it not a fact that Brantley, on the M. & G. Road, is only about six miles south of Luverne, the southern terminus of the Luverne branch of the Midland Company, so that, practically, Luverne and Brantley are competitive points? What would the effect be upon the business of Troy if the rates to Troy were put upon the same basis with the Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Ariosto, and the other points along the M. & G., the M. & E., and the Alabama Midland railroads were also put upon the same basis?

Fourth cross-interrogatory. If you or either of you undertake to answer the eighth direct interrogatory, please state whether you or either of you have ever had any experience in rate-making on railroads or other transportation lines. Have you ever operated a railroad or other transportation line; or been employed or engaged in that line of business? How are you able to state intelligently and accurately what effect the adjustment of rates from the East to Troy on the Alabama Midland Railway Company on the same basis as rates to Montgomery would have? and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy, or such other stations? How do you undertake to state that the aggregate revenue would be increased or diminished by such an adjustment of rates? Is not the matter of fixing and adjusting
297 rates on railroads and other transportation lines a delicate, difficult, and complicated thing, requiring years of constant study and expe-

rience to master in that line of business? Do you think that you, or either of you, having no experience in that line of business, are better capacitated to fix and adjust rates, and to run railroads successfully, than experienced and skilled men who have devoted a lifetime to that business? Answer fully and particularly. Suppose the rates from the East to the stations east of Troy, and to other intermediate points on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery, were fixed and adjusted on the same basis as those to Troy and made relatively equal to the Montgomery rates, what effect would it have upon your business or the business of Troy, and what effect would it have towards increasing or diminishing the tonnage of traffic hauled to Troy? Would the aggregate volume of business at Troy be increased or diminished by such a readjustment of rates, and to what extent? State fully and particularly.

Fifth cross-interrogatory. If in answer to the ninth direct interrogatory you undertake to state whether or not there is any material difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other, state whether or not there is any water transportation to Troy. Is it not a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Appalachicola; and is not said river crossed at Columbus by the Savannah & Western and the Mobile & Girard railroads, and between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway, and at Eufaula by the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola and Atlantic Railroad? What is the distance from Opelika, Alabama, to Columbus, Georgia? How many railroads centre and cross at Opelika? What is the population of Opelika?

A. A. WILEY,
ED. BAXTER, and
ROQUEMORE & WHITE,

Sol'rs for Defs., as shown of Record.

(Indorsed:) No. 158. Interstate Commerce Commission vs. Alabama Midland Railway Co. et als. Cross-int's to compl't int. Filed Oct. 3, 1894. J. W. Dimmick, clerk.

299 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to Geo. H. Dent, who resides at Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received at Eufaula any shipments of goods by river which came by Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Eastern cities; if so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 7. Are the rates which are now charged between Eufaula and Mobile, and between Eufaula and New Orleans, higher or lower than they formerly were? If you say that they are lower now than formerly, state when the various reductions were made, if you can, and what were the causes of those reductions.

Int. No. 8. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola, and thence by vessel to New Orleans?

Int. No. 9. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were permanently increased as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel. What effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula?

Int. No. 10. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 11. Do you know or can you set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Solrs for Defendants, as shown of Record.

302 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to A. Beringer, who resides at Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments of goods by river at Eufaula which came by Apalachicola from Mobile or New Orleans? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

303 Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 7. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 8. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were increased as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16

304 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula?

Int. No. 9. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.?

Int. No. 10. How many competing lines of carriers are there at Eufaula, including all-rail lines, all-water lines, and all part rail and part water lines? State what they are.

Int. No. 11. What is the population of Eufaula and its suburbs?

Int. No. 12. How many manufactories are there at Eufaula, and how many hands do they employ?

Int. 13. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,
Solicitors for Defendants, as shown of Record.

305 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to J. W. Tullis, who resides at Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever shipped any cotton or other goods by river from Eufaula to Apalachicola? If so, how often have you made such shipments, what did they amount to, and when were they made?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

306 Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 7. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola, and thence by vessel to New Orleans?

Int. No. 8. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 9. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,
Sol'rs for Defendants, as shown of Record.

307 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION	}	In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.		

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to J. G. Guice, who resides in Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever shipped any goods or cotton by river from Eufaula to Apalachicola? If so, how often have you made such shipments, what did they amount to, and when were they made?

Int. No. 4. Have you ever received any shipments of goods by river at Eufaula, which came by Apalachicola from Mobile or New Orleans? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. Have you ever received at Eufaula any shipment of goods by river which came by Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 6. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 7. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

Int. No. 8. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York and other Eastern cities?

Int. No. 9. Are the rates which are now charged between Eufaula and Mobile, and between Eufaula and New Orleans higher or lower than they formerly were? If you say that they are lower now than formerly, state when the various reductions were made, and what were the causes of those reductions.

Int. No. 10. Suppose the rail rates on cotton from Eufaula to New Orleans should be increased 18 cents per hundred pounds, what effect, if any, would it have toward inducing the shipment of such cotton and other freight by river to Apalachicola, and thence by vessel to New Orleans?

309 Int. No. 11. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were increased as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstance and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many competing lines of carriers are there at Eufaula, including all-rail lines, all-water lines, and all part rail and part water lines? State what they are.

Int. No. 14. State what transportation lines there are from Eufaula to the Atlantic Seaboard; state what they are.

Int. No. 15. State how many lines of transportation there are from Eufaula to the Gulf of Mexico, and state what they are.

Int. No. 16. How many lines of transportation are there from Eufaula to the Northern and Western markets? And state what they are.

Int. No. 17. What is the population of Eufaula and its suburbs?

Int. No. 18. What amount of cotton is annually handled at Eufaula?

Int. No. 19. How many manufactories are there at Eufaula, and how many hands do they employ?

Int. No. 20. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Solrs for Defendants, as shown of Record.

311 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to Samuel J. Whiteside, who resides in Savannah, Georgia.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. Have you ever been engaged in steamboating on the Chattahoochee River between Columbus and Eufaula and Apalachicola; and if so, how long were you engaged in that business, and when?

Int. No. 3. How many boats are now running between Columbus, Eufaula, and Apalachicola? What are their names, and what is their respective tonnage?

Int. No. 4. What is the average time required for such steamboats to go from Columbus or Eufaula to Apalachicola and return? How many months during the year is the Chattahoochee River navigable by steamboats between Columbus, Eufaula, and Apalachicola?

312 Int. No. 4. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Columbus, Eufaula, and Apalachicola have upon the rates charged by railroads between Columbus, Eufaula and Mobile, and Columbus, Eufaula and New Orleans; and also between Columbus, Eufaula, and New York and other Eastern cities.

Int. No. 5. Are the rates which are now charged between Columbus, Eufaula, and Mobile, and between Columbus, Eufaula, and New Orleans higher or lower than they formerly were? If you say that they are lower now than formerly, state when the various reductions were made, if you can, and what were the causes of those reductions.

Int. No. 6. Suppose the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per hundred pounds, and other rates in proportion, and there was a prospect of such advanced rates being maintained, what effect, if any, would it have towards inducing the shipment of such cotton and other freight by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 7. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Columbus and Eufaula were increased over those now in effect, as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on

4th class, 27 cents per hundred pounds; on 5th class, 19½ cents

313 per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the

shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Columbus?

Int. No. 8. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Columbus and Eufaula, and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 9. State what rates steamboats are accepting from the East and from the West, respectively, on the numbered and lettered classes of freight, respectively, between Apalachicola and Columbus.

Int. No. 10. Suppose steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, what is the lowest rate per hundred pounds at which they could afford to carry freight between Columbus and Apalachicola?

314 Int. No. 11. What amount of steamboat tonnage could be chartered or otherwise obtained for traffic on the Chattahoochee River if the volume of traffic offered was such and the rates obtainable were such as are referred to in the last question?

Int. No. 12. Suppose steamships or sail vessels could obtain full cargoes during the year on every trip going and returning between Apalachicola and Mobile and between Apalachicola and New Orleans, what is the lowest rate per hundred pounds at which they could afford to carry the different classes of freight between those points?

Int. No. 13. Suppose steamships and sail vessels could obtain full cargoes during the year on every trip going and returning between Apalachicola and New York and other Eastern cities, what is the lowest rate per hundred pounds at which they could afford to carry the different classes of freight between Apalachicola and New York?

Int. No. 14. How many competing lines of transportation are there at Columbus, including all rail lines, all water lines, and all part rail and part water lines?

Int. No. 15. How many transportation lines are there from Columbus to the Atlantic Seaboard? And state what they are.

Int. No. 16. How many lines of transportation are there from Columbus to the Gulf of Mexico? And state what they are.

315 Int. No. 17. How many lines of transportation are there from Columbus to the Northern and Western markets? And state what they are.

Int. No. 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Solrs for Defendants, as shown of Record.

316 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to W. R. Moore.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. Have you ever been engaged in steamboating on the Chattahoochee River between Columbus and Eufaula and Apalachicola; and if so, how long were you engaged in that business and when?

Int. No. 3. How many steamboats are now running between Columbus, Eufaula, and Apalachicola; what are their names, and what is their respective tonnage?

Int. No. 4. What is the average time required for a boat to go from Columbus or Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboat between Columbus and Apalachicola?

317 Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Columbus and Apalachicola have upon the rates charged by railroads between Columbus and Eufaula and Mobile, and between Columbus, Eufaula, and New Orleans, and also between Columbus and Eufaula and New York and other Eastern cities?

Int. No. 7. Are the rates which are now charged between Columbus, Eufaula, and Mobile, and between Columbus, Eufaula, and New Orleans, higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made and what were the causes of those reductions.

Int. No. 8. Suppose the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such cotton and of other freight by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 9. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Columbus and Eufaula were increased over those now in effect, as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi

rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessels to Apalachicola and by steamboat from Apalachicola to Columbus?

Int. No. 10. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Columbus and Eufaula, and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 11. Suppose steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, what is the lowest rate per hundred pounds at which they could afford to carry freight between Columbus and Apalachicola?

Int. No. 12. What are the rates now usually charged by steamboats between Columbus and Apalachicola on the different classes of freight referred to in question No. 9?

Int. No. 13. What amount of steamboat tonnage could be chartered or otherwise obtained for traffic on the Chattahoochee River if the volume of traffic offered was such and the rates obtainable were such
319 as are referred to in question No. 11?

Int. No. 14. Suppose steamships or sail vessels could obtain full cargoes during the year on every trip going and returning between Apalachicola and Mobile and New Orleans, what is the lowest rate per hundred pounds at which they could afford to carry freight between Apalachicola and Mobile and New Orleans?

Int. No. 15. Suppose steamships and sail vessels could obtain full cargoes during the year between Apalachicola and New York and other Eastern cities, what is the lowest rate per hundred pounds at which they could afford to carry freight between those points?

Int. No. 16. How many competing lines of carriers are there at Columbus, including all-rail lines, all-water lines, and all part rail and part water lines?

Int. No. 17. How many transportation routes are there from Columbus to the Atlantic Seaboard? And state what they are.

Int. No. 18. How many lines of transportation are there from Columbus to the Gulf of Mexico? And state what they are.

Int. No. 19. How many lines of transportation are there from Columbus to the Northern and Western markets? And state what they are.

Int. No. 20. Do you know or can you set forth any other
320 matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendant, as shown of Record.

321 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to J. Josephs.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. Have you ever been engaged in steamboating on the Chattahoochee River between Columbus and Eufala and Apalachicola; and if so, how long were you engaged in that business, and when?

Int. No. 3. How many steamboats are now running between Columbus, Eufala, and Apalachicola, and what are their names and what is their respective tonnage?

Int. No. 4. What is the average time required for a boat to go from Columbus or Eufala to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboat between Columbus and Eufala and Apalachicola?

322 Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Columbus and Eufala and Apalachicola have upon the rates charged by railroads between Columbus and Eufala and Mobile and New Orleans, and also between Columbus and Eufala and New York and other Eastern cities?

Int. No. 7. Are the rates which are now charged between Columbus and Eufala and Mobile and New Orleans higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made and what were the causes of those reductions.

Int. No. 8. Suppose the rail rates on cotton from Columbus and Eufala to New Orleans should be increased 18 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such cotton and other freight by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 9. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Columbus and Eufala should be increased above those now in effect, as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds;

Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from

Louisville, Cincinnati, and St. Louis to New Orleans, and thence via vessel to Apalachicola, and by steamboat from Apalachicola to Columbus and Eufaula?

Int. No. 10. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Columbus and Eufaula and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 11. Suppose steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus and Eufaula and Apalachicola, what is the lowest rate per hundred pounds at which they could afford to carry freight between Columbus and Apalachicola?

Int. No. 12. What amount of steamboat tonnage could be chartered or otherwise obtained for traffic on the Chattahoochee River if the volume of traffic offered was such and the rates obtainable were such as are referred to in the last question?

324 Int. No. 13. Suppose steamships or sail vessels could obtain full cargoes during the year on every trip going and returning between Apalachicola and Mobile and New Orleans, what is the lowest rate per hundred pounds at which they could afford to carry freight between Apalachicola and Mobile, and between Apalachicola and New Orleans?

Int. No. 14. Suppose steamships and sail vessels could obtain full cargoes during the year between Apalachicola and New York, what is the lowest rate per hundred pounds at which they could afford to carry freight between those points?

Int. No. 15. Suppose steamboats could obtain full cargoes during the year on every trip going and returning between New Orleans, Louisville, Cincinnati, and St. Louis, what is the lowest rate per hundred pounds at which they could afford to carry freight between New Orleans, Louisville, Cincinnati, and St. Louis?

Int. No. 16. How many competing lines of transportation are there at Columbus, including all-rail lines, all-water lines, and all part rail and part water lines?

Int. No. 17. How many transportation routes are there from Columbus to the Atlantic Seaboard? And state what they are.

Int. No. 18. How many transportation routes are there from Columbus to the Gulf of Mexico, and what are they? Give the names of the steamboat lines composing the water routes.

325 Int. No. 19. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,
Solrs for Defendants as shown of Record.

326 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	In equity.
vs.		
THE ALABAMA MIDLAND R'Y COMPANY ET AL.		

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, and to be exhibited to C. E. Caverly.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present business, and where?

Int. No. 3. Have you ever shipped any goods by river from Columbus to Apalachicola? If so, how often have you made such shipments, what did they amount to, and when were they made?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Columbus and Apalachicola? What is the average time required for a boat to go from Columbus to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboat from Columbus to Apalachicola and return?

Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Columbus and Apalachicola have upon the rates charged by railroads between Columbus and Mobile and New Orleans, and between Columbus and New York and other Eastern cities?

327 Int. No. 7. Are the rates which are now charged between Columbus and Mobile and New Orleans higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made and what were the causes of those reductions.

Int. No. 8. Suppose the rail rate of cotton from Columbus to New Orleans should be increased eighteen cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such cotton, and of other freight by river to Apalachicola, and thence by vessel to New Orleans?

Int. No. 9. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Columbus and Enfield were increased over those now in effect as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect,

328 if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Columbus?

Int. No. 10. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Columbus, Ga., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 11. State how many lines of competing carriers there are at Columbus, including all-rail lines, all-water lines, and all part rail and water lines.

Int. No. 12. How many different transportation routes are there from Columbus to the Atlantic seaboard? And state what they are.

Int. No. 13. How many transportation routes are there from Columbus to the Gulf of Mexico? And state what they are.

Int. No. 14. How many transportation routes are there from Columbus to the Northern and Western markets? And state what they are.

Int. No. 15. What is the population of Columbus and suburbs, and what is the volume of trade of Columbus in merchandise, manufactures, cotton, and other farm products?

329 Int. No. 16. What is the number of the manufactories in Columbus and suburbs; how many hands are employed by them, and what is the value of their product?

Int. No. 17. What is the tonnage in and out of Columbus of the R. R. lines and steamboat lines operating to and from Columbus?

Int. No. 18. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

330 In the circuit court of the United States for the middle district
Alabama.

INTERSTATE COMMERCE COMMISSION	} In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to Theodore Welch.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. State how long you have been engaged in the railroad business, and in what capacity and with what companies.

Int. No. 3. What were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F, from Louisville, Cincinnati, and St. Louis, respectively, to Troy, Alabama?

Int. No. 4. What proportions of said through rates were received by the railroads south or east of Montgomery for transportation from Montgomery to Troy?

Int. No. 5. State whether said proportions are unreasonably high rates or reasonably low rates for rail transportation from Montgomery to Troy, and give your reasons for any opinion you may express.

331 Int. No. 6. State whether 23 cents per hundred pounds on cotton for rail transportation from Troy to Montgomery is an unreasonably high rate or a reasonably low rate, and give your reasons for any opinion you may express.

Interrogatory No. 7. What is the distance from Savannah to Montgomery via the shortest rail line between those two points, and give the names of the railroads composing such shortest rail line.

Interrogatory No. 8. What is the distance from Savannah to Troy via the Alabama Midland Railway and its connections?

Interrogatory No. 9. State the various lines of transportation which compete with the Alabama Midland Railway and with the Central Railroad and Banking Co. of Georgia in the transportation of class goods shipped from New York, Baltimore, and the Northeast to Montgomery. Please mention the lines which actually compete for that traffic.

Int. No. 10. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,

ED. BAXTER, &

ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

332 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY CO. ET AL.

Interrogatories to be propounded to Lee McLendon, a witness on behalf of the defendants, filed in pursuance of an order of the court made in the above-entitled cause on the 25 day of July, 1894.

Int. No. 1 (by defendants). State your name, age, residence, and occupation.

Int. No. 2. State how long you have been connected with the railroad traffic business in the United States, with what railroad companies you have been connected, and what positions you have held with said companies.

Int. No. 3. Please file a tariff, or tariffs, showing the local rates charged by the Alabama Midland Railway Company, and mark it, or them, as an exhibit, or exhibits, to your deposition.

Int. No. 4. State whether said local rates, as shown in said tariffs, are, in your opinion, unreasonably high or reasonably low.

Int. No. 5. State whether such of said local rates as are charged in Alabama have been approved or disapproved by the railroad commission of that State, and file a copy of the paper, showing the action of said commission, as an exhibit to your deposition.

333 Int. No. 6. Please file, as an exhibit to your deposition, a copy of the Alabama laws showing the powers of the railroad commission of that State in regard to railroad rates.

Int. No. 7. State whether such of said local rates as are charged in Georgia have been approved or disapproved by the railroad commission of that State, and file a copy of the paper, showing the action of said commission, as an exhibit to your deposition.

Int. No. 8. Please file, as an exhibit to your deposition, a copy of the Georgia laws showing the powers of the railroad commission of that State in regard to railroad rates.

Int. No. 9. Please file, as exhibits to your deposition, copies of the standard tariffs as made and published by the railroad commission of Georgia for the regulation of railroad rates in that State.

Int. No. 10. What were the gross earnings, the operating expenses, and the net earnings of the Alabama Midland Railway for the fiscal year from July, 1892, to June, 1893, inclusive?

Int. No. 11. State whether said railway has been managed since June 1, 1890, skillfully or unskillfully, economically or extravagantly, honestly or dishonestly.

Int. No. 12. State whether or not any and what efforts have been made by its traffic department to secure traffic for said railway.

Int. No. 13. How much revenue was during said fiscal year derived from noncompetitive freight traffic, and how much was derived from competitive freight traffic on said railway?

334 Int. No. 14. State the amount of revenue that was derived by the Alabama Midland Railway Co. during the fiscal year from July, 1892, to June, 1893, inclusive, from competitive traffic coming from the East destined to Montgomery and points beyond.

Int. No. 15. State the amount of revenue that was derived by the Alabama Midland Railway Co. during said fiscal year from traffic coming from the East destined to local stations (including Troy and Ozark), the rates to which local stations from the East were higher than the rates to Montgomery from the East.

Int. No. 16. State the amount of revenue that would have been derived by said company, from the traffic referred to in the last interrogatory, if said company had been compelled to accept from the East to those stations proportions of rates not higher than the proportions of rates which said company accepts from the East to Montgomery.

Int. No. 17. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Solrs for Defendants as shown of Record.

335 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY CO. ET AL. }

Interrogatories to be propounded to W. G. Haylow, a witness on behalf of the defendants, filed in pursuance of an order of the court made in the above-entitled cause on the 25 day of July, 1894.

Int. No. 1 (by defendants). State your name, age, residence, and occupation.

Int. No. 2. What official position, if any, do you hold in relation to the Alabama Midland Railway Company, and how long have you held that position?

Int. No. 3. State whether or not you caused an accurate account to be kept of the cost per ton per mile of transporting local freight on local freight train No. 14 on said railroad.

Int. No. 4. In what direction, between what points, and what distance did said train run, and during what days was said account kept?

Int. No. 5. What is the cost per ton per mile of transporting local freight on said train No. 14?

Int. No. 6. What is the percentage of the paying weight of the local freight to the total weight of said local freight and of the cars in which it was transported on said train No. 14?

336 Int. No. 7. State whether or not you caused an accurate account to be kept of the cost per ton per mile of transporting local freight on local freight train No. 13 on said railroad.

Int. No. 8. In what direction, between what points, and what distance did said train No. 13 run, and during what days was said account kept?

Int. No. 9. What is the cost per ton per mile of transporting local freight on said train No. 13?

Int. No. 10. What is the percentage of the paying weight of the local freight to the total weight of said local freight and of the cars in which it was transported on said train No. 13?

Int. No. 11. What is the average of the cost per ton per mile of transporting local freight on both of said trains, Nos. 14 and 13?

Int. No. 12. What is the average percentage of the paying weight of the local freight to the total weight of said local freight, and of the cars in which it was transported on both of said trains Nos. 14 and 13?

Int. No. 13. State whether or not you caused an accurate account to be kept of the cost per ton per mile of transporting carload freight on through freight trains No. 34 on said railroad.

Int. No. 14. In what direction, between what points, and what distance did said train No. 34 run, and during what days was said account kept?

337 Int. No. 15. What is the cost per ton per mile of transporting carload of freight on said train No. 34?

Int. No. 16. What is the percentage of the paying weight of the carload freight to the total weight of said carload freight and of the cars in which it was transported on said train No. 34?

Int. No. 17. State whether or not you caused an accurate account to be kept of the cost per ton per mile of transporting carload freight on through freight train No. 33 on said railroad.

Int. No. 18. In what direction, between what points, and what distance did said train run, and during what days was said account kept?

Int. No. 19. What is the cost per ton per mile of transporting carload freight on said train No. 33?

Int. No. 20. What is the percentage of the paying weight of the carload freight to the total weight of said carload freight, and of the cars in which it was transported on said train No. 33?

Int. No. 21. What is the average of the cost per ton per mile of transporting carload freight on both of said trains Nos. 34 and 33?

Int. No. 22. What is the average percentage of the paying weight of the carload freight to the total weight of said carload freight, and of the cars in which it was transported in both of said trains Nos. 34 and 33?

Int. No. 23. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,

ED. BAXTER, &

ROQUEMORE & WHITE,

Solrs for Defendants, as shown of Record.

339 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILROAD CO. ET AL.

Interrogatories to be propounded to Bradford Dunham, a witness on behalf of the defendants, filed in pursuance of an order of the court made in the above-entitled cause on the 25 day of July, 1894.

Int. No. 1 (by defendants). State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in the railroad business in the United States; in what positions; and with what companies?

Int. No. 3. State whether or not you are acquainted with the cost of constructing and equipping such railroads as the Alabama Midland Railway.

Int. No. 4. State the average cost per mile of constructing and equipping such a railroad as the Alabama Midland Railway is.

Int. No. 5. What is the mileage of the Alabama Midland Railway, including the main line in both Alabama and Georgia?

Int. No. 6. What were the gross earnings, the operating expenses, and the net earnings of the Alabama Midland Railway for the fiscal year from July, 1892, to June, 1893, inclusive.

Int. No. 7. State whether said railway has been managed since
340 June 1, 1890, skillfully or unskillfully, economically or extravagantly, honestly or dishonestly.

Int. No. 8. State whether or not any, and what efforts have been made by its traffic department to secure traffic for said railway.

Int. No. 9. How much revenue was, during said fiscal year, derived from noncompetitive freight traffic, and how much was derived from competitive freight traffic on said railway?

340½ Int. No. 10. What were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F, from Louisville, Cincinnati, and St. Louis, respectively, to Troy, Ala.?

Int. No. 11. What proportions of said through rates were received by the railroads south or east of Montgomery for transportation from Montgomery to Troy?

Int. No. 12. State whether said proportions are unreasonably high rates or reasonably low rates for rail transportation from Montgomery to Troy; and give your reasons for any opinion you may express.

341 Int. No. 13. State whether 23 cents per hundred pounds on cotton for rail transportation from Troy to Montgomery is an unreasonably high rate or a reasonably low rate, and give your reasons for any opinion you may express.

Int. No. 14. What were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F, from New York, Baltimore, and the Northeast to Montgomery?

Int. No. 15. What proportions of said through rates were received by the Alabama Midland Railway Company for transportation over its part of said through route?

Int. No. 16. State whether said proportions were greater or less than the additional cost of transporting said traffic.

Int. No. 17. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER,
ROQUEMORE & WHITE,
Sol'rs for Defs. as shown of Record.

342 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to Jacob Griel, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long were you engaged in the general merchandise business, and how long have you been engaged in the wholesale grocery business?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

343 Int. No. 5. How many steamboats are running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those two cities?

Int. No. 8. Are the rates which are now charged by railroads between Montgomery and Mobile higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds. What effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean, and thence to Montgomery by river?

344 Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery?

Int. No. 11. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Montgomery, and the circumstances and conditions affecting transportation of traffic to and from Troy, Ala.

Int. No. 13. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 14. Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,
Sol'rs for Def'ts., as shown of Record.

345 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION	}	In equity.
<i>vs.</i> THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.		

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to W. F. Vandiver, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the
346 Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those two cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows : On 1st class, 22 cents per hundred pounds ; on 2nd class, 19 cents per hundred pounds ; on 3rd class, 17 cents per hundred pounds ; on 4th class, 16 cents per hundred pounds ; on 5th class, 14 cents per hundred pounds ; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river ?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows : On 1st class, 42 cents per hundred pounds ; on 2nd class, 38 cents per hundred pounds ; on 3rd class, 35 cents per hundred pounds ; on 4th class, 32 cents per hundred pounds ; on 5th class, 23½ cents per hundred pounds ; on 6th class, 21 cents per hundred pounds ; on Class A, 17 cents per hundred pounds ; on Class B, 19 cents per hundred pounds ; on Class C, 13 cents per hundred pounds ; on Class D, 12 cents per hundred pounds ; on Class E, 21 cents per hundred pounds ; on Class H, 26 cents per hundred pounds ; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery ?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports ?

348 Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Montgomery and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually ?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are they ?

Int. No. 15. What is the population of the town of Troy, Alabama ? How many railroads are there running to that town ? What railroad connections has it ? Is there any water transportation to Troy ? How many wholesale and how many retail merchants do business in said town ? How much cotton is received there annually ? What manufacturing industries are located there and what is their annual output ? What is the total of the mercantile business done there annually ? What of manufacturing ?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause ? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

349 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to T. H. Moore, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and your former & present occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean, and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred

pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river, and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk) or by vessel direct from Mobile to European ports?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and
352 from Montgomery and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are they?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,

ED. BAXTER, &

ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

353 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court made July 25th, 1891, to be exhibited to M. B. Houghton, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and your present and former occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how

often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly state, if you can, when the various reductions were made and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile and thence via steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds; what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Montgomery, & the circumstances & conditions affecting the transportation of traffic to & from Troy, Alabama

Int. 13. How many independent trunk lines or systems of railroads are there at Montgomery, & what are they? How many boat lines are there on the Alabama River plying between Montgomery & Mobile?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know, or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

357 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to Leslie Gilbert, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and your present and former occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, and what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable for steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, 359 and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and 360 from Montgomery and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are they?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this

cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

361 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to Henry M. Hobbie, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged at your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

362 Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those two cities?

Int. No. 8. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river?

Int. No. 9. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On first class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds;
363 on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hun-

dred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile and thence via steamboat from Mobile to Montgomery?

Int. No. 10. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Montgomery, and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 11. What is the population of Montgomery and its suburbs?

Int. No. 12. How many independent systems or trunk lines of railroad are there at Montgomery. State what they are.

Int. No. 13. How many manufacturing establishments or industrial enterprises are there at Montgomery, and how many hands do they employ?

364 Int. No. 14. How many bales of cotton are annually handled at Montgomery?

Int. No. 15. What is the estimated annual value of the commerce of Montgomery?

Int. No. 16. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 17. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol's for Defendants, as shown of Record.

365 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to A. M. Baldwin, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the 366 Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean, and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, 367 and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and 368 from Montgomery, and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are their names?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

369 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to E. B. Joseph, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower than formerly, state, if you can, when the various reductions were made, and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 14 cents per hundred pounds; on 6th class, 12 cents per hundred pounds; what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean, and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, 371 and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel; what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence via steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports?

Int. No. 12. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and 372 from Montgomery and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are they?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination,

or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,
Sol'rs for Def'ts., as shown of Record.

373 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to J. H. Clisby, who resides in Montgomery, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever received any shipments by river at Montgomery which came via Mobile from points west of Mobile? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. Have you ever received at Montgomery any shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. How many steamboats are now running on the Alabama River between Montgomery and Mobile? What is the average time required for a boat to go from Montgomery to Mobile and return?

Int. No. 6. How many months during the year is the Alabama River navigable by steamboats between Montgomery and Mobile?

Int. No. 7. What effect, if any, does the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile have upon the rates charged by railroads between those cities?

Int. No. 8. Are the rates which are now charged by railroads between those two cities higher or lower than they formerly were? If you say that they are lower now than formerly, state, if you can, when the various reductions were made and what were the causes of those reductions.

Int. No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On 1st class, 22 cents per hundred pounds; on 2nd class, 19 cents per hundred pounds; on 3rd class, 17 cents per hundred pounds; on 4th class, 16 cents per hundred pounds; on 5th class, 15 cents per hundred pounds; on 6th class, 12 cents per hundred pounds, what effect, if any, would it have towards inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river?

Int. No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On 1st class, 42 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 35 cents per hundred pounds; on 4th class, 32 cents per hundred pounds; on 5th class, 23½ cents per hundred pounds; on 6th class, 21 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 19 cents per hundred pounds; on Class C, 13 cents per hundred pounds; on Class D, 12 cents per hundred pounds; on Class E, 21 cents per hundred pounds; on Class H, 26 cents per hundred pounds; on Class F, 26 cents per barrel, what effect, if any, would it have towards inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile and thence by steamboat from Mobile to Montgomery?

Int. No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, West Point, Savannah, an' Norfolk, should be increased 13 cents per hundred pounds, what would be the effect, if any, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk) or by vessel direct from Mobile to European ports?

Int. No. 12. State what differen'e, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Montgomery and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 13. How many bales of cotton are handled at Montgomery annually?

Int. No. 14. How many independent trunk lines or systems of railroad are there at Montgomery, and what are they, and how many steamboat lines ply the Alabama River from Montgomery to Mobile?

Int. No. 15. What is the population of the town of Troy, Alabama? How many railroads are there running to that town? What railroad connections has it? Is there any water transportation to Troy? How many wholesale and how many retail merchants do business in said town? How much cotton is received there annually? What manufacturing industries are located there, and what is their annual output? What is the total of the mercantile business done there annually? What of manufacturing?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Solrs for Defendants, as shown of Record.

377 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court made July 25th, 1894, to be exhibited to W. F. Shellman, who resides in Savannah, Georgia.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. State how long you have been engaged in the railroad business, and in what capacity, and with what companies.

Int. No. 3. What were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F from Louisville, Cincinnati, and St. Louis, respectively, to Troy, Ala.?

Int. No. 4. What proportions of said through rates were received by the railroads south or east of Montgomery for transportation from Montgomery to Troy?

Int. No. 5. State whether said proportions are unreasonably high rates or reasonably low rates for rail transportation from Montgomery to Troy; and give your reasons for any opinion you may express.

Int. No. 6. State whether 23 cents per hundred pounds on cotton for rail transportation from Troy to Montgomery is an unreasonably high rate or a reasonably low rate, and give your reasons for any opinion you may express.

Int. No. 7. What were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F from New York, Baltimore, and the Northeast to Montgomery?

Int. No. 8. What proportions of said through rates were received by the Central Railroad & Banking Company of Georgia for transportation over its part of said through route?

Int. No. 9. State whether said proportions were greater or less than the additional cost of transporting said traffic.

Int. No. 10. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,

ED. BAXTER, &

ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

379 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to R. Q. Edmonson, who resides in Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. State how long you have been engaged in your present occupation.

Int. No. 3. Have you ever received at Eufaula any shipments of goods by river which came by Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

Int. No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 7. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 8. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were permanently increased, as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19

381 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula?

Int. No. 9. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 10. How many competing lines of carriers are there at Eufaula, including all-rail lines, all-water lines, and all part rail and part water lines. State what they are.

Int. No. 11. State what lines of transportation there are from Eufaula to the Gulf of Mexico?

Int. No. 12. What is the population of Eufaula and its suburbs?

Int. No. 13. How many bales of cotton are annually handled at Eufaula?

Int. No. 14. How many manufacturies are there at Eufaula, and how many hands do they employ?

Int. No. 15. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue 382 in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED BAXTER, &
ROQUEMERE & WHITE,

Sols. for Defendants, as shown of Record.

383 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to Geo. C. McCormick, who resides in Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever shipped any cotton or goods by river from Eufaula to Apalachicola? If so, how often have you made such shipments, what did they amount to, and when were they made?

Int. No. 4. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 5. How many months during the year is the Chattahoochee River navigable by steamboat between Eufaula and Apalachicola?

384 No. 6. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 7. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola and thence by vessel to New Orleans?

Int. No. 8. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were permanently increased, as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula?

Int. No. 9. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 10. State what competing lines of transportation there are at Eufaula, and give their names.

Int. No. 11. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

386 In the circuit court of the United States for the middle district of Alabama.

INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

Interrogatories filed in the above-entitled cause on behalf of the defendants therein, in obedience to the order of said court, made July 25th, 1894, to be exhibited to John O. Martin, who resides at Eufaula, Alabama.

Int. No. 1. State your name, age, residence, and occupation.

Int. No. 2. How long have you been engaged in your present occupation?

Int. No. 3. Have you ever shipped any cotton or goods by river from Eufaula to Apalachicola? If so, how often have you made such shipments, what did they amount to, and when were they made?

Int. No. 4. Have you ever received any shipments of goods by river at Eufaula which came by Apalachicola from Mobile or New Orleans? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 5. Have you ever received at Eufaula any shipment of goods by river which came by Apalachicola which came from Boston, New York, Philadelphia, Baltimore, or other Eastern cities? If so, how often have you received such shipments, what did they amount to, and when were they received?

Int. No. 6. How many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola? What is the average time required for a boat to go from Eufaula to Apalachicola and return?

Int. No. 7. How many months during the year is the Chattahoochee River navigable by steamboats between Eufaula and Apalachicola?

Int. No. 8. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola have upon the rates charged by railroads between Eufaula and Mobile, between Eufaula and New Orleans, and between Eufaula, New York, and other Eastern cities?

Int. No. 9. Suppose the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, what effect, if any, would it have towards inducing the shipment of such cotton and other freights by river to Apalachicola, and thence by vessel to New Orleans?

Int. No. 10. Suppose the rail rates from Cincinnati, Louisville, and St. Louis to Eufaula were permanently increased as follows: On 1st class, 33 cents per hundred pounds; on 2nd class, 38 cents per hundred pounds; on 3rd class, 32 cents per hundred pounds; on 4th class, 27 cents per hundred pounds; on 5th class, 19½ cents per hundred pounds; on 6th class, 16 cents per hundred pounds; on Class A, 17 cents per hundred pounds; on Class B, 14 cents per hundred pounds; on Class C, 8 cents per hundred pounds; on Class D, 7 cents per hundred pounds; on Class E, 19 cents per hundred pounds; on Class H, 4 cents per hundred pounds; on Class F, 16 cents per barrel, what effect, if any, would such an increase of rates have towards inducing the shipment of freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola, and by teamboat from Apalachicola to Eufaula?

Int. No. 11. State what difference, if any, exists between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

Int. No. 12. How many competing lines of carriers at Eufaula, including all-rail lines, all-water lines, and all part rail and water lines? State what they are.

Int. No. 13. How many lines of transportation are there from Eufaula to the Atlantic seaboard? State what they are.

Int. No. 14. What is the population of Eufaula and its suburbs?

Int. No. 15. How many manufactories are there at Eufaula, and how many hands do they employ?

Int. No. 16. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this

your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Sol'rs for Defendants, as shown of Record.

390 (Indorsed:) In equity. In U. S. cir. et. mid. dist. Ala. Interstate Commerce Commission vs. Alabama Midland Ry. et als. Interrogatories to G. H. Dent, A. Beringer, J. W. Tullis, J. G. Griell, S. J. Whiteside, W. R. Moore, J. Josephs, C. E. Coverly, T. Welch, L. McLendon, W. J. Haylow, B. Durham, J. Greil, W. F. Vandiver, T. H. Moore, M. B. Houghton, L. Gilbert, H. M. Hobbie, A. M. Baldwin, E. B. Joseph, J. H. Clisky, W. F. Shellman, R. Q. Edmondson, G. C. McCormick, and J. O. Martin. Filed the 16th day of August, A. D. 1894. J. W. Dimmick, clerk.

391 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.		

The complainant in the above-entitled cause, reserving the right to present and insist upon before the court all legal objections to the direct interrogatories propounded in behalf of the defendants, files, in pursuance of the order of said court made July 25, 1894, the following cross-interrogatories to the following witnesses, to wit, Geo. H. Dent, A. Berniger, J. W. Tullis, J. G. Guice, R. L. Edmondson, Geo. C. McCormick, and John Q. Martin, to be exhibited and propounded to each of said witnesses severally:

1st cross-interrogatory. If in your direct examination you have stated that you have received at Eufaula any shipments of goods by the Chattahoochee River via Appalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, state from which of said cities each of said shipments was made and of what goods said shipments consisted. Give the name of the steamer or vessel or water line on which each of said shipment was made to Appalachicola, and from Appalachicola to Eufaula, and attach to your answer hereto a copy of the receipt given on payment by or for you of the freight charged on each of said shipments.

2nd cross-interrogatory. Was the route by river from Appalachicola to Eufaula the usual route over which shipments were made to you from said cities?

What proportion of all the shipments made to you at Eufaula from said cities came by the river route and what proportion by rail or the other routes? How many shipments on the average do you receive in your business at Eufaula per month and per year from said cities? State how many shipments per month or per year come to you at Eufaula from said cities via river from Appalachicola, and how many by other routes. Do Eufaula merchants ship their goods from Northeastern cities to any extent by river via Appalachicola; and if so, to what extent?

3rd cross-interrogatory. If in your direct examination you state that you have received at Eufaula any shipments by the Chattahoochee River via Appalachicola from Mobile or New Orleans, state in each instance from which of said cities the shipment was made, of what it consisted, the name of the steamer, or vessel, or water line on which the shipment was made to Appalachicola and from Appalachicola to Eufaula, and attach to your answer hereto a copy of the receipt given on payment by or for you of the freight charged on each of said shipments.

4th cross-interrogatory. Was the route by river from Appalachicola to Eufaula the usual route over which shipments were made to you from Mobile or New Orleans? What proportion of all the shipments made to you at Eufaula from said cities came by this river route, and what proportion by other routes? How many shipments on the average do you receive in your business at Eufaula per month, or per year, from said cities? How many shipments on the average per month, or per year, come to you at Eufaula from said cities via river from Appalachicola, and how many by other routes? Do Eufaula merchants ship their goods from said cities to any material extent by river via Appalachicola; and if so, to what extent?

5th cross-interrogatory. If you have stated in your direct examination that you have received shipments from Mobile and New Orleans via Appalachicola by river to Eufaula, state where such shipments originated—whether at Mobile, or New Orleans, or Louisville, Cincinnati, St. Louis, or other Ohio River points?

6th cross-interrogatory. On shipments from Ohio River points via the Ohio and Mississippi rivers to New Orleans and thence by water to Appalachicola and thence by river to Eufaula, would not a transfer of the goods have to be made at New Orleans from the Mississippi River steamer or vessel to a Gulf steamer or vessel, and at Appalachicola from the Gulf steamer or vessel to a Chattahoochee River steamer? Would not these transfers involve additional expense and delay?

7th cross-interrogatory. On shipments from New York, Boston, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Appalachicola by river to Eufaula, would not a transfer of the goods have to be made at Appalachicola from the ocean or Gulf steamer or vessel to the river steamer or vessel, and would not this involve expense and delay?

8th cross-interrogatory. How long a time would it require for a shipment from Louisville, Cincinnati, St. Louis, or other Ohio River points to Eufaula by water, and how long by the rail or usual rail route? How long a time would a shipment from New York, Boston, Philadelphia, or Baltimore to Eufaula by water require, and how long by the usual rail route?

9th cross-interrogatory. Do any steam vessels run from Appalachicola to Mobile or New Orleans, or to Northeastern cities? Does it not ordinarily take two weeks to make the trip in a sailing vessel between Appalachicola and New Orleans, and in bad weather three or four days more?

393 10th cross-interrogatory. Is not Appalachicola situated on the Gulf Coast, and would not a shipment by water from New York or other Northeastern city have to pass around Florida Keys and the

extreme southern point of the peninsula of Florida in order to reach Appalachicola?

11th cross-interrogatory. What is the distance by water from Eufaula to Appalachicola, and from Appalachicola by water to Mobile and New Orleans? What are the distances by water from Boston, New York, Philadelphia, and Baltimore, respectively, around Florida Keys to Appalachicola?

12th cross-interrogatory. How often do boats run from Eufaula to Appalachicola? How often from Appalachicola to Mobile and New Orleans? How often from Appalachicola to Northeastern cities? How often do boats arrive at Eufaula from Appalachicola?

13th cross-interrogatory. If in your direct examination you state that you have shipped cotton or other goods by river to Appalachicola, or by river to Appalachicola and thence by water to Mobile or New Orleans, state what other goods than cotton you have so shipped, and name the steamer or vessel on which each of said shipments were made to Appalachicola and from thence to Mobile or New Orleans.

14th cross-interrogatory. Was the route from Eufaula via river to Appalachicola the usual route on which you made shipments to Mobile or New Orleans? What proportion of all the shipments made by

394 you from Eufaula to Mobile and New Orleans were made by river via Appalachicola? How many shipments do you make on the average per month, or per year, from Eufaula by river via Appalachicola to Mobile or New Orleans, and how many on the average per month or per year by another route, or other routes.

15th cross-interrogatory. What class of vessels ply between Appalachicola and other ports? Can any but light-draft vessels enter the harbor of Appalachicola? Is not Appalachicola Harbor only used for lumber? Was not the bar at Appalachicola destroyed during the war? Is there any regular steamer or sail line from Appalachicola to Mobile, New Orleans, the Northeastern cities, or any of them, or to any foreign port? If so, name it, or them. Is any cotton or other goods shipped to Appalachicola for direct export?

16th cross-interrogatory. Can you get a through bill of lading on shipments from Eufaula by river via Appalachicola to Mobile or New Orleans, or to foreign ports? Can you negotiate such bill with the banks? Can you with any reasonable certainty count that such shipments will reach Mobile or New Orleans in time to take such ocean steamer as you may have engaged?

17th cross-interrogatory. Is there not an extra river insurance on cotton or other goods shipped by river from Eufaula to Appalachicola, and from Appalachicola to Mobile or New Orleans? What is the amount of this extra insurance?

18th cross-interrogatory. Does not the law require extra bagging to be put on cotton shipped by river? Is not such extra bagging
395 required on cotton shipped from Eufaula to Appalachicola? What is the expense of putting on this extra bagging?

19th cross-interrogatory. Are not shipments around Florida Keys regarded as extra hazardous, and does not this enhance the rate of insurance?

20th cross-interrogatory. Do not the Eufaula banks make a difference in discounting drafts where cotton is shipped by river?

21st cross-interrogatory. Do not the rules recently adopted by the Liverpool Cotton Association call for the rejection of cotton having the extra bagging required on cotton shipped by river?

22nd cross-interrogatory. Have you any data from which you can estimate with certainty the possible effect water competition by the river between Eufaula and Appalachicola and thence by water to Mobile, New Orleans, Northeastern cities, and Ohio River points has on rail rates between Eufaula and those cities and points? If so, give that data. Has this water competition ever at any time within your knowledge, and if so, when and for how long a time, actually controlled and fixed those rail rates?

H. D. CLAYTON,
U. S. Atty.

WM. C. OATES,
L. A. SHAVER,
Attys. for Petitioner.

(Indorsed :) No. 158. Interstate Commerce Commission vs. Alabama Midland Ry. Co. et als. Cross-interrogatories to Geo. H. Dent, A. Berniger, J. W. Tullis, J. G. Guice, R. L. Edmondson, Geo. C. McCormick, and John Q. Martin. Filed the 31st day of Aug., 1894. J. W. Dimmick, clerk.

396 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

The complainant in the above-entitled cause reserving the right to present and insist upon before the court all legal objections to the direct interrogatories propounded in behalf of the defendants, files in pursuance of the order of said court made July 25, 1894, the following cross-interrogatories to the following witness, to wit, C. E. Caverly:

1st cross-interrogatory. If in your direct examination you have stated that you have received at Columbus any shipments of goods by the Chattahoochee River via Appalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, state from which of said cities each of said shipments was made and of what goods said shipments consisted; give the name of the steamer or vessel or water line on which each of said shipments was made to Appalachicola and from Appalachicola to Columbus, and attach to your answer hereto a copy of the receipt given on payment by or for you of the freight charged on each of said shipments.

2nd cross-interrogatory. Was the route by river from Appalachicola to Columbus the usual route over which shipments were made to you from said cities? What proportion of all the shipments made to you at Columbus from said cities came by the river route, and what proportion by

397 the rail or other routes? How many shipments on the average do you receive in your business at Columbus per month, and per year,

from said cities? State how many shipments per month, or per year, come to you at Columbus from said cities via river from Appalachicola, and how many by other routes. Do Columbus merchants ship their goods to any extent from Northeastern cities by river via Appalachicola; and if so, to what extent?

3rd cross-interrogatory. If in your direct examination you state that you have received at Columbus any shipments by the Chattahoochee River via Appalachicola from Mobile or New Orleans, state in each instance from which of said cities the shipment was made, of what it consisted, the name of the steamer or vessel or water line on which the shipment was made to Appalachicola and from Appalachicola to Columbus, and attach to your answer hereto a copy of the receipt given on payment by or for you of the freight charged on each of said shipments.

4th cross-interrogatory. Was the route by river from Appalachicola to Columbus the usual route over which shipments were made to you from Mobile or New Orleans? What proportion of all the shipments made to you at Columbus from said cities came by this river route, and what proportion by rail or other routes? How many shipments on the average do you receive in your business at Columbus per month, or per year, from said cities? How many shipments on the average per month, or per year, come to you at Columbus from said cities via river from Appalachicola, and how many by other routes? Do Columbus merchants ship their goods to any extent from said cities by river via Appalachicola; and if so, to what extent?

5th cross-interrogatory. If you have stated in your direct examination that you have received shipments from Mobile and New Orleans via Appalachicola by river to Columbus, state where such shipments originated, whether at Mobile, or New Orleans, or Louisville, Cincinnati, St. Louis, or other Ohio River points?

6th cross-interrogatory. On shipments from Ohio River points via the Ohio and Mississippi rivers to New Orleans and thence by water to Appalachicola and thence by river to Columbus, would not a transfer of the goods have to be made at New Orleans from the Mississippi River steamer or vessel to a Gulf steamer or vessel, and at Appalachicola from the Gulf steamer or vessel to a Chattahoochee River steamer? Would not these transfers involve additional expense and delay?

7th cross-interrogatory. On shipments from New York, Boston, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans, via Appalachicola by river to Columbus, would not a transfer of the goods have to be made at Appalachicola from the ocean or Gulf steamer or vessel to the river steamer or vessel, and would not this involve expense and delay?

8th cross-interrogatory. How long a time would it require for a shipment from Louisville, Cincinnati, St. Louis or other Ohio River points to Columbus by water, and how long by the usual rail route? How long a time would a shipment from New York, Boston, Philadelphia, or Baltimore to Columbus by water require, and how long by the usual rail route?

9th cross-interrogatory. Do any steam vessels run from Appalachicola to Mobile or New Orleans, or to Northeastern cities? Does it not ordinarily take two weeks to make the trip in a sailing vessel between Appalachicola and New Orleans, and in bad weather three or four days more?

399 10th cross-interrogatory. Is not Appalachicola situated on the Gulf Coast, and would not a shipment by water from New York or other Northeastern city have to pass around Florida Keys and the extreme southern point of the peninsula of Florida in order to reach Appalachicola?

11th cross-interrogatory. What is the distance by water from Columbus to Appalachicola, and from Appalachicola by water to Mobile and New Orleans? What are the distances by water from Boston, New York, Philadelphia, and Baltimore, respectively, around Florida Keys to Appalachicola?

12th cross-interrogatory. How often do boats run from Columbus to Appalachicola? How often from Appalachicola to Mobile and New Orleans? How often from Appalachicola to Northeastern cities? How often do boats arrive at Columbus from Appalachicola?

13th cross-interrogatory. If, in your direct examination, you state that you have shipped cotton or other goods by river to Appalachicola, or by river to Appalachicola and thence by water to Mobile or New Orleans, state what other goods than cotton you have so shipped, and name the steamer or vessel on which each of said shipments were made to Appalachicola and from thence to Mobile or New Orleans.

14th cross-interrogatory. Was the route from Columbus via river to Appalachicola the usual route on which you made shipments to Mobile or New Orleans? What proportion of all the shipments made by you from Columbus to Mobile and New Orleans were made by river via Appalachicola? How many shipments do you make on the average per month, or per year, from Columbus by river via Appalachicola to Mobile or New Orleans, and how many on the average per month, or per year, by another route or other routes?

15th cross-interrogatory. What class of vessels ply between Appalachicola and other ports? Can any but light-draft vessels enter the harbor of Appalachicola? Is not Appalachicola Harbor only used for lumber? Was not the bar at Appalachicola destroyed during the war? Is there any regular steamer or sail line from Appalachicola to Mobile, New Orleans, the Northeastern cities, or any of them, or to any foreign port? If so, name it, or them. Is any cotton or other goods shipped to Appalachicola for direct export?

16th cross-interrogatory. Can you get a through bill of lading on shipments from Columbus by river via Appalachicola to Mobile or New Orleans, or to foreign ports? Can you negotiate such bill with the banks? Can you with any reasonable certainty count that such shipments will reach Mobile or New Orleans in time to take such ocean steamer as you may have engaged?

17th cross-interrogatory. Is there not an extra river insurance on cotton or other goods shipped by river from Columbus to Appalachicola and from Appalachicola to Mobile or New Orleans? What is the amount of this extra insurance?

18th cross-interrogatory. Does not the law require extra bagging to be put on cotton shipped by river? Is not such extra bagging required on cotton shipped from Columbus to Appalachicola? What is the expense of putting on this extra bagging?

19th cross-interrogatory. Are not shipments around Florida Keys regarded as extra hazardous, and does not this enhance the rate of insurance?

20th cross-interrogatory. Do not the Columbus banks make a difference in discounting drafts where cotton is shipped by river?

21st cross-interrogatory. Do not the rules recently adopted by the Liverpool Cotton Association call for the rejection of cotton having the extra bagging required on cotton shipped by river?

22nd cross-interrogatory. Have you any data from which you can estimate with certainty the possible effect water competition by the river between Columbus and Apalachicola, and thence by water to Mobile, New Orleans, Northeastern cities, and Ohio River points has on rail rates between Eufaula and those cities and points? If so, give that data. Has this water competition ever at any time within your knowledge, and if so, when and for how long a time, actually controlled and fixed those rail rates?

23d cross-interrogatory. If in your direct examination you state what is the tonnage in and out of Columbus by steamboat lines operating to and from Columbus, state how much of said tonnage is through tonnage from Columbus to Apalachicola destined for points beyond, and how much is tonnage from Columbus to landings or points between Columbus and Apalachicola. Is not the bulk of the business done by boats running on the Chattahoochee River local business or business to landings above Apalachicola?

H. D. CLAYTON,
U. S. Attorney.
WM. C. OATES,
L. A. SHAYER,
Att'ys for Petitioner.

(Indorsed:) No. 158. Interstate Commerce Commission vs. Alabama Midland Railway Co. et. als. Cross-interrogatories to C. E. Coverly. Filed the 31st day of August, 1894. J. W. Dimmick, clerk.

402 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

The complainant in the above-entitled cause, reserving the right to present and insist upon before the court all legal objections to the direct interrogatories propounded in behalf of the defendants, files, in pursuance of the order of said court made July 25, 1894, the following cross-interrogatories to the following witnesses, to wit: Theo. Welch, Lee McLendon, W. J. Haylow, Bradford Dunham, and W. F. Shellman, to be exhibited and propounded to each of said witnesses severally:

1st cross-interrogatory. If in your direct examination you give the through rates in effect March 1, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F from Louisville, Cincinnati, and St. Louis, respectively, to Troy, restate them here and give in connection with those rates the rates at the same date on the same classes from said cities to Montgomery, and from said cities via the Louisville & Nashville road to Mobile.

2nd cross-interrogatory. How long prior to March 1, 1894, had said rates from said cities to Troy, to Montgomery, and to Mobile been in effect? Give the rates which immediately preceded said rates. Were not the rates from those cities to Troy and Montgomery, and from the East to Troy and Montgomery, greatly reduced in the latter part of May or first part of June, 1894? And if so, give those reduced rates. How long were said reduced rates maintained?

403 3rd cross-interrogatory. What is the distance via the Louisville & Nashville road from Louisville, Cincinnati, and St. Louis, respectively, to Montgomery, and the distance from Montgomery over the Alabama Midland and the Georgia Central railroads, respectively, to Troy? What rate per ton per mile is yielded by the proportion of the through rate from those cities through Montgomery to Troy, charged for the haul from Montgomery to Troy? What rate per ton per mile is yielded by the through rate from those cities, respectively, to Montgomery?

4th cross-interrogatory. On through shipments from Louisville, Cincinnati, and St. Louis to Troy via Montgomery, are the cars in which the goods are shipped carried through to Troy, or are the goods transferred at Montgomery to cars on the Alabama Midland or Georgia Central roads? What extra expense, if any, is incurred at Montgomery? State, if practicable, what such expense amounts to per car, or per 100 lbs. of the traffic. On through shipments from these cities to Montgomery and Troy, respectively, is there any difference—and if so, what—between the terminal expenses at Troy and those at Montgomery?

5th cross-interrogatory. If you say the proportion of the through rates received by the Alabama Midland and Georgia Central roads for transportation from Montgomery to Troy are reasonable, state whether in so pronouncing them you are considering them as local rates or parts of through rates. Is not the cost of handling local freight much greater than of handling through freight per ton per mile? Is not the proportion of the through rate received by said roads for the service of transportation from

404 Montgomery to Troy substantially the local rate from Montgomery to Troy? In making rates from Montgomery to Troy is not Montgomery regarded as what is known as a "basing point" or "distributing point" or "trade center"?

6th cross-interrogatory. State, if you know, whether the railroad commissions of Alabama or Georgia undertake to prescribe or regulate the through rates on interstate traffic, or the proportions of such through rates charged for that part of through hauls of such traffic which may be in those States.

7th cross-interrogatory (to Lee McLendon only). If in your direct examination you have given any estimate or statement of the amount of revenue that would have been, in your opinion, derived by the Alabama Midland Railway Company during the fiscal year, from July, 1892, to June, 1893, from traffic coming from the East destined to local stations on said railway (the rates to which stations from the East were higher than the rates from Montgomery to the East) if said company had been compelled to accept to those stations proportions of rates not higher than the proportions of rates which it accepts in shipments from the East to Montgomery, state fully and in detail on what you base said estimate or statement. Do you take into consideration the fact, among others, that the traffic from the East to those stations might and probably would have been greatly

increased by lower through rates? Does the proportion of said through rates from the East to Montgomery charged by said railway company for its portion of the haul to Montgomery pay anything; and if so, what above operating expenses? Does it pay anything; and if so, what above operating expenses and fixed charges?

8th cross-interrogatory (to Lee McLendon only). State the amount of revenue that was derived by the Alabama Midland Railway Company during the fiscal year from July, 1892, to June, 1893, from traffic coming from the East destined to all stations except Montgomery on said railway, those the rates to which from the East are lower than those to Montgomery as well as those to which said rates are higher. State the amount of revenue that was derived by said company during said year from traffic coming from the East destined to Montgomery and not to points beyond. Give similar statements of amounts of revenue as are above enquired about for the fiscal years from July, 1891, to June, 1892, and from July, 1893, to June, 1894?

9th cross-interrogatory. Has not the revenue of railroads generally throughout the country fallen off materially during the last two or three years because of the depressed financial and business condition of the country? Was not the revenue of the Alabama Midland for the fiscal year 1892-3 reduced by cut rates and rate wars? Was it not an exceptionally bad year?

10th cross-interrogatory (to B. Dunham only). If in your direct examination you state the average cost per mile of constructing and equipping such a railroad as the Alabama Midland Railway, state whether you know the actual cost per mile of constructing said railway.

11th cross-interrogatory. When cotton is shipped from Troy via Montgomery through to New Orleans, is it transferred at Montgomery from the cars in which it is shipped at Troy to cars of or on the Louisville and Nashville road? What extra expense, if any, is incurred by the roads at Montgomery on such shipments, and what does that expense amount to per 100 lbs. or per bale?

H. D. CLAYTON,
U. S. Attorney.
WM. C. OATES,
L. A. SHAVER,
Att'ys for Petitioner.

(Indorsed:) The Interstate Commerce Commission vs. The Alabama Midland Railway Co. et als. Cross-interrogatories to Theo. Welch, Lee McLendon, W. J. Haylow, Bradford Dunham, and W. F. Shellman. Filed the 31st day of Aug., 1894. J. W. Dimmick, clerk.

406 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	In equity.
vs.		
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.		

The complainant in the above-entitled cause, reserving the right to present and insist upon before the court all legal objections to the direct interrogatories propounded in behalf of the defendants, files in pursuance

of the order of said court made July 25, 1894, the following cross-interrogatories to the following witnesses, to wit: Samuel J. Whiteside, W. R. Moore, and J. Josephs, to be exhibited and propounded to each of said witnesses severally:

1st cross-interrogatory. If in your direct examination you have named boats as running on the Chattahoochee River between Columbus, Eufaula, and Apalachicola, state whether all said boats run all the way from Columbus to Apalachicola. Between what landings on said river does each of said boats run?

2nd cross-interrogatory. What is the distance by river from Columbus to Apalachicola, from Eufaula to Apalachicola, from Columbus to River Junction, from Columbus to Chattahoochee, from Eufaula to River Junction, and from Eufaula to Chattahoochee?

3rd cross-interrogatory. Is not the bulk of the business done by boats on the Chattahoochee River business between landings above Apalachicola? If you say there is any through business from or to Columbus and Eufaula via Apalachicola to or from Mobile and New Orleans, is it not small in comparison with the total business between landings above
407 Apalachicola? If you say there is any through business from or to Columbus and Eufaula via Apalachicola to or from New York and other Northeastern cities, is it not small in comparison with the total business between landings above Apalachicola? Do you know of any shipments from Louisville, Cincinnati, or St. Louis, by the Ohio and Mississippi rivers to New Orleans, and thence via Apalachicola to Eufaula or Columbus? Of what did such shipments consist?

4th cross-interrogatory. If you state in your direct examination that you were engaged in steamboating on the Chattahoochee River between Columbus and Eufaula and Apalachicola, state in what capacity, whether as captain or in some subordinate position. Was your boat owned by a railroad or run in connection with a railroad? And if so, name such railroad.

5th cross-interrogatory. Are not the boats or boat lines on the Chattahoochee owned or controlled by the Georgia Central Railroad Company, or some other railroad company? Do not said boats or boat lines carry freight to Chattahoochee to be transported thence by the Savannah, Florida & Western road to Savannah? Does not the Alabama Midland road cross the Chattahoochee River at River Junction? Is not River Junction about the same distance from Savannah as Chattahoochee?

6th cross-interrogatory. While steamboating on said river did your boat haul any through freight from or to Columbus or Eufaula via Apalachicola to or from Mobile, New Orleans, New York, or other Northeastern cities? If so, was said freight material in amount? How did it compare in amount with the freight carried by your boat to River Junction, or Chattahoochee, or other landings above Apalachicola? Of what did said freight consist? Was it a matter of frequent or rare occurrence that you carried such through freight? How often per week, or
408 month, or year did you carry such through freight? How often did you make the trip from Columbus to Apalachicola, and how often from Eufaula to Apalachicola? How long a time did it require to go from Columbus, and how long from Eufaula?

7th cross-interrogatory. Can ocean or Gulf steamers or vessels enter the harbor of Apalachicola? Would not freight carried on a Chattahoochee

River boat to Apalachicola destined for Mobile, or New Orleans, or New York, or other Northeastern cities, or carried from those cities to Apalachicola destined for Eufaula or Columbus, have to be transferred at Apalachicola to or from the ocean or Gulf steamer or vessel to or from the river boat? How is this transfer made? What class of vessels can enter the harbor of Apalachicola? How long does or would it take such a vessel to make the trip to Mobile, or New Orleans, or New York? What kind or class of vessels, if any, sail or run between Apalachicola and those cities? What time does it require for such a vessel to make the trip to each of them? In going from Apalachicola to New York, or other Eastern city, would not a vessel have to go around Florida Keys? What is the distance from Apalachicola around Florida Keys by water to New York? What is the distance from Apalachicola to Mobile and to New Orleans?

8th cross-interrogatory. What is the condition of the harbor and bar at Apalachicola? Was not said bar destroyed or made comparatively useless during the war? Is not the harbor at Apalachicola used almost entirely for lumber?

9th cross-interrogatory. You are called upon in the direct interrogatories propounded to you to make a number of suppositions and to give your opinion as to what would be the results if such supposed states of facts were to exist, if you have given your opinion, have you any data upon which it is based? If so, furnish that data.

409 10th cross-interrogatory. You are asked to "suppose that steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola," and if that were so, to state "the lowest rate per 100 lbs. at which they could carry freight between Columbus and Apalachicola"—has that state of things ever existed within your knowledge? Is it probable that it will ever exist? If you have given an opinion as to such lowest rate, is it not largely, if not entirely, guesswork? You are asked to suppose the same state of facts in reference to steamships and vessels sailing or running between Apalachicola and Mobile, Apalachicola and New Orleans, and Apalachicola and New York and other Eastern cities, and to state what under those conditions would be lowest rates by such steamers or vessels between Apalachicola and those cities—has that state of things in these instances ever existed within your knowledge, or is it probable that it ever will exist? If you have given an opinion as to such lowest rates in these last-named hypothetical cases, is it not largely, if not entirely, guesswork?

11th cross-interrogatory. What business are you now engaged in and where?

H. D. CLAYTON,
U. S. Atty.

WM. C. OATES,

L. A. SHAVER,

Attys. for Petitioner.

(Indorsed:) The Interstate Commerce Commission vs. The Alabama Mid. Ry. Co. et als. Cross-interrogatories to Sam'l J. Whitesides, W. R. Moore, and J. Josephs. Filed the 31st day of Aug., 1894. J. W. Dimmick, clerk

410 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

The complainant in the above-entitled cause, reserving the right to present and insist upon before the court all legal objections to the direct interrogatories propounded in behalf of the defendants, files in pursuance of the order of said court made July 25, 1894, the following cross-interrogatories to the following witnesses, to wit: J. Griel, W. F. Vandiver, T. H. Moore, M. B. Houghton, Leslie Gilbert, Henry M. Hobbie, A. M. Baldwin, E. B. Joseph, and J. H. Clisby, to be exhibited and propounded to each of said witnesses severally:

1st cross-interrogatory. If in your direct examination you say that you have received shipments by river at Montgomery from points west of Mobile, name such points west of Mobile, and state of what said shipments consisted.

2nd cross-interrogatory. If in your direct examination you say you have received shipments at Montgomery by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, state of what said shipments consisted.

3rd cross-interrogatory. What is the average time required for a boat to go from Mobile to Montgomery and from Montgomery to Mobile? What is the average time required for a shipment to go from Mobile to Montgomery by rail, and from Montgomery to Mobile by rail?

411 4th cross-interrogatory. Is not the Alabama River navigable at certain seasons of the year only for light-draft steamers? What are those seasons and how long do they last?

5th cross-interrogatory. What proportion of your shipments from points you have named as being west of Mobile come to you at Montgomery by river via Mobile, and what proportion by rail or other routes? What was the average of your total shipments per week, per month, and per year, from said points to Montgomery by all routes during the time you were receiving said shipments by river via Mobile, if you say you received any such shipments by river?

6th cross-interrogatory. What proportion of your shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities come to you at Montgomery by river via Mobile, and what proportion by rail or other routes? What was the average of your total shipments per week, per month, and per year from said cities to Montgomery by all routes during the time you were receiving said shipments by river, if you say you received any such shipments by river?

7th cross-interrogatory. What is the distance by river from Mobile to Montgomery, and what is the distance by rail?

8th cross-interrogatory. Is there not a large amount of local business to and from landings intermediate between Mobile and Montgomery done by the steamers on the Alabama River, and does not this constitute the bulk of the business done by such steamers? Could said steamers maintain themselves on the through business done by them on said river? Is not their through business small in comparison with their local?

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9th cross-interrogatory. Is not the risk greater and the insurance rate higher on shipments by steamer than by rail between Mobile and Montgomery? What is the difference in insurance on shipments by river and by rail?

10th cross-interrogatory. How often do steamboats go from Montgomery to Mobile, and how often from Mobile to Montgomery? How many trains carrying freight are there per day from Montgomery to Mobile, and from Mobile to Montgomery?

11th cross-interrogatory. Can and do not you and other merchants of Montgomery sell goods at Brundidge, or Ozark, or Dothan, stations and towns all east of Troy on the Alabama Midland Railway?

12th cross-interrogatory. Have you any data upon which you base any estimate you may give of the effect of an advance in rail rates such as is enquired about in the direct interrogatories propounded to you, in inducing shipments from New York and the Northeast by ocean to Mobile and thence by river to Montgomery, and in inducing shipments from Louisville, Cincinnati, and St. Louis to Mobile and thence by river to Montgomery? If you have such data, give it.

H. D. CLAYTON,
U. S. Atty.

WM. C. OATES,
L. A. SHAVER,
Attys. for Petitioner.

(Indorsed :) The Interstate Commerce Commission vs. The Alabama Mid. Railway Co. et als. Cross-interrogatories to J. Griel, W. F. Vandiver, T. H. Moore, M. B. Houghton, Leslie Gilbert, Henry M. Hobbie, A. M. Baldwin, E. B. Joseph, and J. H. Clisby. Filed the 31st day of Aug., 1894. J. W. Dimmick, clerk.

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UNITED STATES OF AMERICA.

Circuit court of the United States for the middle district of Alabama.

To Judge W. S. THORINGTON,

Montgomery, Alabama :

Know ye, that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine E. H. Bashinsky, Oliver C. Wiley, Charles Henderson, Charles B. Goldthwaite, H. B. Cowart, J. B. Corcoran, L. N. Bashinsky, J. W. Nall, B. M. Talbott, Joel D. Murphree, J. E. Henderson, Geo. H. Dent, A. Beringer, J. W. Tullis, J. G. Guice, Samuel J. Whiteside, W. R. Moore, J. Josephs, C. E. Caverly, Theodore Welsh, Lee McLendon, W. J. Haylow, Bradford Dunham, Jacob Griel, W. F. Vandiver, T. H. Moore, M. B. Houghton, Leslie Gilbert, Henry M. Hobbie, A. M. Baldwin, E. B. Joseph, J. H. Clisby, W. F. Shellman, R. Q. Edmonson, Geo. C. McCormick, and John O. Martin as witnesses in behalf of complainant and defendants in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein The Interstate Commerce Commission is plaintiff, and The Alabama Midland Railway Company and others are defendants, on oath to be by you administered, upon interrogatories and

cross-interrogatories annexed to this commission; to take and certify the deposition of the witnesses, and return the same to our said circuit court with all convenient speed under your hand and seal.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of October, A. D. one thousand eight hundred and ninety-four.

Attest:

[SEAL.]

J. W. DIMMICK,

Clerk U. S. Circuit Court Middle District of Alabama.

414 (Indorsed :) No. 158. In the circuit court of the U. S. mid. dist. of Ala. The Interstate Commerce Commission vs. The Alabama Midland Railway Company et als. Cross-interrogatories by complainants to G. H. Dent, A. Berniger, J. W. Tullis, J. G. Guice, R. L. Edmondson, Geo. C. McCormick, John Q. Martin, C. E. Caverly, The. Welch, Lee McLendon, W. J. Haylow, Bradford Dunham, W. F. Shellman, Sam'l J. Whitesides, W. R. Moore, J. Josephs, J. Griel, W. F. Vandiver, T. H. Moore, M. B. Houghton, Leslie Gilbert, H. M. Hobbie, A. M. Baldwin, E. B. Joseph, and J. H. Clisby. Filed the 31st day of Aug., 1894. J. W. Dimmick, clerk.

415 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY AND OTHERS. }

Depositions of E. H. Bashinsky, Oliver C. Wiley, Charles Henderson, Charles B. Goldthwaite, H. B. Cowart, J. B. Corcoran, L. M. Bashinsky, J. W. Nall, B. M. Talbott, Joel D. Murphree, J. E. Henderson, George H. Dent, A. Beringer, J. W. Tullis, J. G. Guice, W. R. Moore, J. Josephs, Theodore Welch, Lee McLendon, W. J. Haylow, Bradford Dunham, Leslie Gilbert, Jacob Greil, W. F. Vandiver, T. H. Moore, M. B. Houghton, H. M. Hobbie, A. M. Baldwin, E. B. Joseph, J. H. Clisby, W. F. Shellman, R. Q. Edmonson, George C. McCormick, and John O. Martin, sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama in a certain cause therein pending between The Interstate Commerce Commission as complainants and The Alabama Midland Railway Company and others as defendants.

416 *Answers of T. H. Moore to the direct and cross interrogatories propounded to him in the above-stated cause.*

T. H. MOORE, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is T. H. Moore; age, 44 years; residence, Montgomery, Alabama; my former occupation was owner and captain of steamboats. My present occupation is manager of steamboats and ice companies in Montgomery.

2nd. Answering the 2nd direct interrogatory. I have been engaged in the steamboat business about 20 years and in the ice business about 7 years.

3rd. Answering the 3rd direct interrogatory. I have not in my own business received any shipments at Montgomery by river which came via Mobile from points west of Mobile, not being engaged in any mercantile business which required such shipments, but have received such shipments on my boats for others, who were engaged in the mercantile business at Montgomery. The shipments referred to were received on my boat at Mobile and brought by river to Montgomery for merchants here. I cannot specify more particularly as to how often or the quantity of such shipments, but they have been made every trip my boats make, more or less. Such trips being made once a week.

4th. Answering the 4th direct interrogatory. As owner and captain of said boat, I have received shipments by river for others, which came via Mobile by river to Montgomery; such shipments originated in Boston, New York, Philadelphia, Baltimore, and other Eastern cities. I cannot state how often said shipments are received, or what they amounted to, or when they were received, further than to say that some of these shipments from the East came by the Benner Line to Mobile by schooner, and a good many are made from the East to Savannah, and from Savannah by rail to Mobile, and back from Mobile to Montgomery by river. This is done very often to get the benefit of cheaper rates, it being cheaper to ship from Savannah by rail to Mobile, and thence by river to Montgomery, than to ship by rail direct to Montgomery. As stated in my answer to the 3rd direct interrogatory, not being engaged in a mercantile business which requires such shipments to me at Montgomery, the shipments specified were received upon my boat at Mobile in my business as part owner and captain of said boat.

5th. Answering the 5th direct interrogatory. There are four steamers now running on the Alabama River between Mobile and Montgomery. The average time required for a boat to go from Montgomery to Mobile and return is one week.

6th. Answering the 6th direct interrogatory. The Alabama River is navigable every month in the year by steamboats between Montgomery and Mobile, but for two months in the year it is navigable only by very light-draft boats and barges.

417 7th. Answering the 7th direct interrogatory. The effect of the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile, on the railroad rates charged between those cities, is to make the railroads reduce their rates in proportion to the Mobile rate, for the purpose of taking business away from the boat lines. For instance, say the rate from New Orleans on sugar to Mobile should be 10 cents a hundred, and $22\frac{1}{2}$ to Montgomery from New Orleans by rail, the boat line would take it from Mobile to Montgomery for 8 cents, and the railroads would place their rates at those figures so as to leave a sufficient margin between it and the boat rates from Mobile to Montgomery, so as to induce those shipments direct by rail; so the effect of the river being navigable between Mobile and Montgomery is to prevent the railroads from making any increase above these figures between Mobile and Montgomery. These figures are used by way of illustration, but represent the fact as it is.

8th. Answering the 8th direct interrogatory. The rates now charged by railroads between Montgomery and Mobile are lower than they were

formerly. About seven years ago there was a boat line organized by the merchants of Montgomery because they were dissatisfied with the rail rates to Montgomery, and those boats were run about two years, and the railroads reduced their rates, and since that time they have been such as to allow but little margin for the river traffic.

9th. Answering the 9th direct interrogatory. If the rail rates from New York to Montgomery should be increased, as specified in the 9th direct interrogatory, the effect would be to very greatly increase the shipment of such freight from New York to Mobile by ocean, and would give the boats upon the Alabama River all they would want to do in carrying freight between Mobile and Montgomery, and the river traffic would be largely increased.

10th. Answering the 10th direct interrogatory. If the rates on shipments from Louisville, Cincinnati, and St. Louis, and other Northwestern cities were increased, as stated in the 10th direct interrogatory, the inevitable result would be that all business for Montgomery would go to Mobile by rail or water and come up the river to Montgomery on the boats now on the river.

11th. Answering the 11th direct interrogatory. If the rail rates on cotton intended for export and shipped from Montgomery to Atlantic ports, Brunswick, Savannah, and West Point, and Norfolk, should be increased 13 cents per 100 pounds, the effect would be very decided towards inducing shipments of such cotton from Montgomery to Mobile by river, and thence by vessel from Mobile to European points, and there would be no difficulty in getting vessels to come into Mobile to get such cotton, and the capacity of the river for such shipments would be from 15 to 20 thousand bales per month, and could be increased by the barge system to 30 or 40 thousand per month. All cotton received at Montgomery could be shipped to Mobile by river, and that would be the effect of such an increase.

418 12th. Answering the 12th direct interrogatory. The difference between the circumstances effecting the transportation of traffic to and from Montgomery, and to and from Troy, are as follows: The Alabama River is a competitor against the rail rates at Montgomery, and Troy has no river or other water transportation, and Troy has only two rail lines against Montgomery's 8 rail lines.

13th. Answering the 13th direct interrogatory. I can only state upon general knowledge that between 130 and 160 thousand bales of cotton are handled annually at Montgomery.

14th. Answering the 14th direct interrogatory. The following independent trunk lines or systems of railroads are at Montgomery: Alabama Midland, which is a part of the Plant system; the Louisville & Nashville; the Georgia Central; the Western of Alabama, and the Savannah, Americus & Montgomery Railway.

15th. Answering the 15th direct interrogatory. I do not know the population of Troy, Alabama, definitely, but I think it is between 3,000 and 4,000. There are only two railroads running into that town: The Alabama Midland and the Mobile & Girard. These two railroads have all the connections of the Plant and Georgia Central systems. There is no water transportation to Troy. I do not know how many wholesale or retail merchants do business in Troy. I do not know of my own personal

knowledge how much cotton is received there annually, but have heard through business sources that it was about 40,000 bales. I only know of a fertilizer factory and an ice factory at Troy. The capacity of the ice factory is about 8 tons a day, and the capacity of the fertilizer works I do not know. I can not state what other manufacturing industries, if any, are there. I do not know the total of the mercantile nor the manufacturing business done there annually.

16th. Answering the 16th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories :

1st. Answering the 1st cross. I did not state in my direct examination that I had received shipments at Montgomery from points west of Mobile, but did state that I had brought such shipments from Mobile to Montgomery as part owner and captain of a boat on the Alabama River. The shipments so made came from Louisville, Cincinnati, St. Louis, Chicago, and all points in the West. Such shipments consisted of staves, beer in cask, empty bottles, nails, grain and Western produce, flour, meal, and other articles.

2nd. Answering the 2nd cross. As stated in my direct examination, I have only received shipments upon my boat at Mobile for merchants at Montgomery. Such shipments came from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, and consisted of dry goods, boots and shoes, starch, snuff, soap, coffee, etc.

419 3rd. Answering the 3rd cross. The average time required for a boat to come from Mobile to Montgomery, doing only a through business, is 50 hours, and about 36 hours to go from Montgomery to Mobile; but for a boat doing a local business it would take about 72 hours to go each way. The average time required for a shipment to come from Mobile to Montgomery by rail is about 8 or 10 hours, and about the same time to go from Montgomery to Mobile.

4th. Answering the 4th cross. The Alabama River is navigable at certain seasons of the year only for light-draft steamers. These seasons generally last through September and October.

5th. Answering the 5th cross. I have received no shipments at Montgomery from points west of Mobile by rail. Those that came by river were received at Mobile upon my boat for others, as stated in my answer to the direct interrogatories. I can not answer more definitely than I have done in my answers to the direct interrogatories about the total shipments made on my boat per week, per month, or per year.

6th. Answering the 6th cross. As stated in my direct examination, I am not engaged in a mercantile business in which shipments are made from Boston, New York, Philadelphia, Baltimore, or other Eastern cities to me at Montgomery via Mobile, but only in shipping such freights upon my boat from Mobile to Montgomery, and for this reason I can not further answer this 6th cross-interrogatory.

7th. Answering the 7th cross. The distance by river from Montgomery to Mobile is 400 miles; the distance by rail is 180 miles.

8th. Answering the 8th cross. The local business to and from landings between Montgomery and Mobile done by steamers on the Alabama River is now their principal business, for the reason that the railroads have cut us off very largely from the through business by their low rates. With the present railroad rates the margin for the boats on through business is so small that we do not seek that class of business.

9th. Answering the 9th cross. Freight shipped by rail is not insured, because the railroads are responsible for loss or damage, but shipments by river must be insured, because steamboats under the marine law can not be held responsible for total loss or damage, and shippers can only protect themselves by insurance, and for this reason shipments are higher by river than by rail.

10th. Answering the 10th cross. Steamboats go from Montgomery to Mobile and from Mobile to Montgomery three times a week, each way, during the busy seasons. I do not know the number of trains carrying freight per day from Montgomery to Mobile or from Mobile to Montgomery.

11th. Answering the 11th cross. Not being engaged in the mercantile business, I am unable to answer the 11th cross-interrogatory.

420 12th. Answering the 12th cross. I have no data further than that already given in my answers to the direct interrogatories upon which to base my estimate as to the effect of an advance in rail rates, such as is inquired about in the direct interrogatories, in inducing shipments from New York and the Northeast by ocean to Mobile and thence by river to Montgomery, or from Louisville, Cincinnati, and St. Louis by river to Mobile and thence by river to Montgomery.

421 *Answer of B. M. Talbot to the direct and cross interrogatories propounded to him in the above-entitled cause.*

B. M. TALBOT, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is B. M. Talbot; residence, Troy; occupation, wholesale grocery business. I have resided in Troy 15 years, and have been engaged in my present business 5 years.

2nd. Answering the second direct interrogatory. If there is any cotton shipped from Troy to New Orleans via Montgomery it is shipped in carloads and compressed. I do not know of my own personal knowledge that cotton so shipped is carried on from Montgomery in the same cars in which it is shipped from Troy, or whether it is transferred at Montgomery to cars on the L. & N. road, but from my business experience and observation, I should say that it is carried on through in the same cars. I know of no extra expense to the roads at Montgomery than would be incident to the like transfer of cars at any other point. If there should be any expense at all on such transfer it would not exceed $\frac{1}{2}$ a cent per bale and practically nothing per 100 pounds.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, St. Louis, and other Ohio River points via Montgomery to Troy, they are shipped on a through bill of lading to Troy at an aggregate through rate. Freights from the Ohio River points to Troy all come in carloads, and it would not be necessary

to transfer from car to car at Montgomery; it comes to Troy in the original car in which it is loaded at the initial point. There is no extra expense incurred by the roads at Montgomery on such shipments. I should say that the terminal expenses at Troy on such through shipments to Troy were less than the terminal expenses at Montgomery on through shipments from said cities to Montgomery, because of the office force or expense at Troy is smaller than at Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is from 4,000 to 4,200. Troy's mercantile enterprises are composed of general merchandise and groceries. There are about 80 firms of that class. The amount of business being between a million and a half and a million and three-quarters dollars per annum. Her manufacturing enterprises are, a cotton mill; fertilizer factory; oil mill, acid chamber; 2 saw mills; furniture factory; ice factory; machine shop; waterworks; electric-light plant; four livery and sale stables; compress, and two banks. Her transportation facilities are two railroads, the Alabama Midland and Mobile and Girard. The character of the territory tributary to Troy is uplands, composed of agricultural and timber. The population of this territory is between 40,000 and 45,000.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

422 6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on my business and the business of Troy in towns and territory around Troy and on the line of the Alabama Midland and Central railroads is to drive trade away from Troy and give it to Montgomery and Columbus, and enables the towns in the territory around Troy and on the line of the Alabama Midland and Georgia Central railroads to take away from Troy trade which belongs to it.

7th. Answering the seventh direct interrogatory. I have never visited Apalachicola, Florida, and for that reason can not answer the remaining questions in this interrogatory referring to Apalachicola, except from mere hearsay. I can only state, on information, that no groceries are shipped from or to Columbus or Eufaula via Apalachicola, to or from Mobile or New Orleans or Atlantic ports, for the reason that the route is impracticable because the vessels that ply between Mobile and Apalachicola are unable to go up the river, and after arriving at Apalachicola the goods are unloaded, which means delay, and taken by the boats on the river; and, as groceries are sold on short time and principally cash, they could not afford to get goods that way. Further, the route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, and St. Louis, and to New York and Northeastern cities, is impracticable for through business. I have no personal knowledge of the character of the harbor at Apalachicola or the character of the vessels which ply between Apalachicola and other points.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railroad east of Montgomery were fixed or adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, the effect would be to increase the tonnage of traffic hauled to Troy and the aggregate traffic of the Alabama Midland Railway largely, for the reason that there

are several roads centering in Montgomery which would compete for this business, and there is only two in Troy competing for the business.

9th. Answering the ninth direct interrogatory. There is no material difference between the circumstances and conditions effecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other. It is true that Columbus and Eufaula are situated on the Chattahoochee River, but traffic by the river route from those cities with Eastern or Western points is impracticable. There is no such difference as justifies, in my opinion, the present excess of the Troy rates over those of the other cities.

10th. Answering the tenth direct interrogatory. I do not know and can not set forth any other matter or thing that may be a benefit or advantage to either of the parties to this cause, or that may be material to the matters in question in this cause.

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Cross-interrogatories :

1st. Answering the first cross. As to my answer to the 2d direct interrogatory, I stated in on information from other parties, and not of my own knowledge. My answer to the 3d direct interrogatory was based on my own knowledge and from my business observation. I have never had cotton shipped from Troy via Montgomery to New Orleans. I cannot state of my personal knowledge whether or not any extra expense is incurred by the roads at Montgomery on shipments of cotton from Troy via Montgomery to New Orleans, but from observation I cannot see why there should be any extra expense. I have had class goods shipped from Louisville, Cincinnati, and St. Louis, and other Ohio River points, via Montgomery to Troy, under a through bill of lading and at an aggregate through rate, which through rate was made up by taking the through rate to Montgomery from the point of shipment, plus the local from Montgomery to Troy. There is no such transfer at Montgomery of such goods from the cars in which it is brought to that city to the cars of the Alabama Midland or Georgia Central roads, unless such freight is shipped in less than carloads, which is sometimes the case. There would be no expense incurred by the roads at Montgomery on such shipments in carload lots by the Central or Midland roads between Montgomery and Troy. My answer on this subject is based on knowledge, and not on conjecture nor hearsay. I do not know of my own personal knowledge how the terminal expenses of Troy on such shipments to Troy compare with the terminal expenses of Montgomery on such shipments to Montgomery, but from my observation in business generally I would say that the expense would be less in Troy than at Montgomery, for the reason that the clerical or office force at Montgomery is larger than at Troy and more expensive for the road to maintain.

2nd. Answering the second cross. The population of Troy, as shown by the last census, is about 3,500. There are about 80 mercantile houses in the city of Troy, and of these only one is strictly a wholesale house; there are about five wholesale and retail combined, and the remainder are retail houses. Practically all of such merchants buy goods from the East and from the West. The volume of trade of Troy yearly is about two and a quarter million dollars. My answer to the last question is based on my business observation. Between 35,000 and 36,000 bales of cotton

were received in Troy during the year 1893. There are the following manufacturing enterprises in the city of Troy: Cotton mill, fertilizer works, oil mill, ice factory, machine shops, furniture factory, 2 saw mills. I do not know how many hands are employed in these enterprises. We have an electric-light plant, owned by the city, but the amount of capital invested I do not know. The water works, owned by the city, with an invested capital of about 42,000 dollars; the compress, the capital of which I do not know definitely, but will say about \$50,000. I cannot state the number of hands employed by these industrial enterprises. I am unable to state the amount of capital invested in the mercantile and manufacturing enterprises in the city of Troy. Troy is 85 miles from Columbus, 75 miles from Eufaula, 52 miles from Montgomery, about 55 miles from Luverne, 28 miles from Brantley, about 40 miles from Ozark, and 65 miles from Dothan. All these distances are given by rail. There are no more manufacturing and industrial enterprises in the city of Troy to-day than there were at the time the Board of Trade of Troy filed 424 their petition to the Commission, but there are some eight or ten additional mercantile houses. There are two less manufacturing enterprises now in Troy than in 1890. There are more industrial enterprises now than then, the water works and electric-light plant having been constructed since 1890, and there are fifteen (about) more mercantile houses now than there were in 1890.

3rd. Answering the third cross. If the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy were changed as prayed for, and should result in a revision of the rates to Dothan, Ozark, Brantley, Seawright, and the other intermediate stations, so as to make the rates to these stations correspondingly low, the effect on my business and the business of Troy and the territory around Troy and the towns on the lines of the Alabama Midland and Georgia Central companies, would be to increase such business. I suppose it is a fact that the Georgia Central, known as the Ozark extension, and the Alabama Midland roads make Ozark a competitive point; however, the rates on the Alabama Midland are practically the same as at Ozark both east and west on all stations going as far down as the river. It is a fact that Ariosto, on the Midland, and Charlton, on the Ozark extension, are located within three-quarters of a mile of each other, but I do not think they are competitive points for the reason that no business of any consequence is done at either place. Brantley on the M. & G. road is 12 miles south of Luverne, the southern terminus of the Luverne branch of the Midland, but the two places are only competitors for the intermediate territory between them. The effect upon the business of Troy if the rates to Troy were put on the same basis with the Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Seawright, Ariosto, and other points along the lines of the M. & G. the M. & E., and the Midland roads were also put upon the same basis, would be to increase the business of Troy.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation line. I have never operated a railroad or other transportation line, or been engaged or employed in that line of business. What I have stated as to the effect of an adjustment of rates to Troy on the Alabama Midland on the same basis as rates to Montgomery, and the effect that it would have to increase or diminish

the tonnage of traffic hauled to Troy or other stations, is based upon observation and experience in business; and in like manner I also stated that the aggregate revenue would be increased by such an adjustment of rates, by reason of putting us on an equal basis with our competitors, Montgomery and Columbus. I think the matter of fixing and adjusting rates on railroads or other transportation lines is a difficult, delicate, and complicated matter, requiring constant study and experience to master in that line of business. I do not think that I, having no experience in that line of business, am better capacitated to fix and adjust rates, and to run railroads successfully, than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to the stations east of Troy, and to other intermediate points on the Alabama Midland and Georgia Central railroads, south of Columbus and east of Montgomery, were fixed and adjusted on the same basis as those to Troy, and made relatively equal to the Montgomery rates, the effect upon my business and the business of Troy would be to increase the tonnage of traffic hauled to Troy. The aggregate volume of business at Troy would be increased to a considerable extent, but to what extent I can not speak definitely.

425 5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. It is my information that this river is not navigable all the year round from Apalachicola to Columbus by river boats. Said river is crossed at Columbus by the Mobile & Girard, but I can not speak as to the Savannah & Western; and is crossed between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway; and at Eufaula by the Central; and at Alaga by the Alabama Midland; but I can not say whether it is crossed at Chattahoochee by the Pensacola & Atlantic Ry. or not. The distance from Opelika, Alabama, to Columbus, Georgia, by rail, is I think about 45 miles. I do not know how many roads concentrate and cross at Opelika. I do not know what is the population of Opelika.

426 *Answer of Charles Henderson to the direct and cross interrogatories propounded to him in the above-entitled cause.*

CHARLES HENDERSON, being duly sworn, deposes and says :

1st. Answering the first direct interrogatory. My name is Charles Henderson; residence, Troy, Alabama; occupation, wholesale grocery business. I have resided here for 20 years, and have been engaged in my present business about five years.

2nd. Answering the second direct interrogatory. When cotton is shipped from Troy via Montgomery to New Orleans, if any should be shipped, it would be shipped in carloads and compressed. On account of the rate there is no cotton shipped from Troy to New Orleans, but, if it should be shipped, there is no reason why it should not be carried through Montgomery to New Orleans in the same cars in which it leaves Troy; but there is no cotton shipped from Troy to New Orleans within my knowledge. There is no more extra expense for transferring at Montgomery from one road to another than there is at any other point. This expense per hundred pounds or per bale amounts to nothing.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, and St. Louis, or other Ohio River points, via Montgomery to Troy, they are shipped under a through bill of lading and for an aggregate through rate. There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the road of the Georgia Central or Alabama Midland companies, but the car containing such freight is transferred from one road to the other unless the through car is disabled, and then the transfer is made from the disabled car at the station at which the disabling occurs. No extra expense is incurred by the roads at Montgomery on such shipments. There are no differences in the terminal expenses of Troy and Montgomery, except in the management of the offices, which is governed by the amount of the traffic to such terminus. As it is, the terminal expenses of the Alabama Midland at Troy is much less than those of the road at Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is between four and five thousand. There are between seventy-five and a hundred mercantile houses in Troy; they do a business of about a million and a half dollars. These houses are general merchandise, dry goods, groceries, and such business as is usually done in all Southern interior towns of the same size. We have a fertilizer factory which does a business of about \$300,000 per annum in fertilizers; they make their own acids, and have an oil mill attached; the extent of the business done by the oil mill I do not know. We have a cotton mill, a furniture factory, two planing mills, ice factory, water works, electric lights, two banks, a compress, pressing about 40,000 bales per annum. The capacity of the cotton mill is 60,000 a day; it is a knitting mill. We have two railroads, the Alabama Midland, under the control of the S. F. & W. Rd., and the Central Railroad of Georgia. The Midland is a part of the S. F. & W. system, and connects with their system at Bainbridge on the east, and on the west it connects with all the railroads centering at Montgomery; and the Central connects at Montgomery with all the Western roads, and extends to Savannah, where it connects with their steamship lines. The character of the territory naturally tributary to Troy is agricultural, and the population of this territory is about 40,000.

5th. Answering the fifth direct interrogatory. The city of Opelika, Alabama, is not situated upon any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on my business and the business of Troy and towns and the territory around Troy and on the lines of the Alabama Midland and the Georgia Central (M. & G.) roads is that business is thereby driven away from us and from Troy, because we are not able, on account of such rates, to compete with Montgomery and Columbus. The names of the places whose business is taken away from us on this account are as follows: Grady, Shady Grove, Ansley, Banks, Brundidge, and Tennille, on the Alabama Midland, and Brantley, Seawright, and Glenwood, on the Central. The through rate from Ohio River points to Troy is made up of the through rate to Montgomery with a full local from Montgomery to Troy added. The local rates on the railroad are based on mileage, and the rate from Montgomery or Columbus to any of these stations named is

less than the rates from Montgomery or Columbus to Troy plus the rate from Troy to any of these stations. From Louisville, Ky., to Montgomery, and reshipped to Brundidge, a station 16 miles beyond Troy, the combination rate is 1.46 on first class. The combination rate from Louisville, Ky., to Troy, and reshipped to Brundidge, on first class is 1.68. The combination rate from Louisville, Ky., to Montgomery, and reshipped to Brundidge, on Class F, which is flour, is 68 cents, and from Louisville, Ky., to Troy, and reshipped to Brundidge, is 84 cents per barrel. All the other stations are in like proportion, which necessarily takes the business from Troy.

7th. Answering the seventh direct interrogatory. I have visited Apalachicola, Florida. It has been about six years since I was last there. I can only speak from information as to the character of vessels that can enter the harbor at Apalachicola, and on such information state that only small schooners can enter it. I am not sufficiently acquainted with the character of vessels which sail from Mobile or New Orleans to Apalachicola, or around the Florida Keys to Atlantic ports, to say if they can enter such harbor. Ocean or Gulf vessels of any size have to anchor outside of the harbor, and the river boat at Apalachicola would have to be towed out to such vessel and the freight transferred to or from such boat from or to such vessel. If the transfer was not made in this way it would be necessary to transfer such freight from or to the vessels to or from the river boat by lighters. I do not know the distance the transfer would have to be made if done by lighters, nor how far the river boat would have to be towed. There may be some few groceries shipped from or to Eufaula or Columbus via the Alabama River through Apalachicola from or to Mobile or New Orleans or Atlantic ports, but such shipments are not usual on account of the great delay. I did not see any evidence of such shipments or other business at

428 Apalachicola, nor any preparations for any from or to said cities or ports. The route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, and St. Louis, or to New York and Northeastern cities, is an impracticable route for any through business on account of the delay. Most of the through business that is received at Eufaula or Columbus or other points in that territory via the Chattahoochee River is shipped to Fernandino, a port on the Atlantic Coast, and is transported by rail to Chattahoochee Junction, and then up the Chattahoochee River to Eufaula and Columbus. The harbor at Apalachicola is used mainly and almost exclusively for the lumber business. While I was at Apalachicola I only saw two river boats in the harbor and two small sail boats. There was one small vessel (sail) outside loading with timber, and the timber was towed out to the vessel. I never saw any ocean or Gulf steamers either inside or outside of the harbor.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railway east of Montgomery were fixed and adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, the effect would be to largely increase the tonnage of traffic hauled to Troy proper. As to the other stations, I don't see that it would effect the traffic or effect the traffic of the road or the receipts from the total traffic. I do not think the aggregate revenue of the road would be effected for the reason that

goods that are shipped into this territory from Montgomery would be shipped from Troy, and for that reason about the same revenue would be received by the roads as they receive now.

9th. Answering the ninth direct interrogatory. There are no material differences affecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other; and there is no such difference as justifies the present excess of the Troy rates over those of these other cities.

10th. Answering the tenth direct interrogatory. I do not know and can not set forth any other matter or thing that may be a benefit or advantage to either of the parties to this cause or that may be material to the matters in question in this cause.

Cross-interrogatories:

1st. Answering the first cross. I stated from observation and my personal knowledge my answer to the second and third direct interrogatories. I have never had any cotton shipped from Troy via Montgomery to New Orleans, but I have endeavored to have some shipped and the railroad rates prevented. N'ever having shipped any cotton from Troy to Mobile, I can not state if it was carried in the same cars from Montgomery to Mobile as it was shipped from Troy. As stated, there being no shipments of cotton from Troy to Mobile via Montgomery, there is no extra expense to the roads at Montgomery, and there are no reasons why there should be such extra expense as such shipments were made. I have repeatedly endeavored to obtain rates to New Orleans on cotton through the agents of the respective roads at Troy, and my information from them was that there were no transfer charges, but the rate was higher on account of charging a full local to Montgomery, and then the through rate from Montgomery to New Orleans made that prohibitory. I have had class

429 goods shipped from Louisville, Cincinnati, and St. Louis and Ohio River points via Montgomery to Troy. I am able to state of my own personal knowledge that the goods so shipped came under a through bill of lading at an aggregate through rate; this aggregate through rate was made up of the through rate from the shipping point to Montgomery with the full local added from Montgomery to Troy. I am able to state of my own personal knowledge that such goods are received at Troy in the same cars in which they were loaded at the initial point, and they simply transfer the car at Montgomery. I can state of my own knowledge that there is no expense of transfer to the roads at Montgomery on such through shipments, unless it be of a private agreement among the roads. The same rules that govern shipments to Montgomery govern those to Troy. The consignee has to unload the cars and is subject to demurrage, and consequently they have the same expense. This is stated upon my personal knowledge.

2nd. Answering the second cross. The population of Troy, as shown by the last census, according to my best recollection, was between 3,500 and 3,600. There are between 75 and 100 mercantile houses in Troy; there is only one strictly wholesale merchant, the others do a wholesale and retail business combined. About fifty per cent of these merchants buy goods from the West, and nearly all of them buy from the East. The volume of trade of Troy amounts to about \$2,000,000 annually. My answer to the last question about the volume of trade of Troy is based

upon my observation. About 35,000 bales of cotton were received in Troy during the year 1893. There are about six manufacturing enterprises now in the city of Troy: The fertilizer factory, which embraces the manufacture of fertilizers, and their own acids and ammonias; the ice factory, cotton mill, furniture factory, variety works, machine shops, and these employ about 175 hands. The amount of capital invested in the fertilizer factory is a paid-up capital of \$150,000, with some surplus; in the compress is \$50,000; in the knitting mill is about \$28,000; in the ice factory is about \$6,000; in the machine shops about \$8,000. I do not know the amount of capital invested in the furniture works. The waterworks have about \$50,000 capital, and the electric light works \$25,000. In addition there are two banks, one with a half million and the other about fifty thousand dollars. It is impracticable to estimate the amount of capital invested in the private mercantile houses, and I have already stated the amount of capital invested in the manufacturing and industrial enterprises. The distance from Troy to Columbus is 85 miles, and to Eufaula 70 miles, and to Montgomery 51 miles. The distance to Luverne, on the Alabama Midland, is 50 miles, and Brantley, on the M. & G., is 25 miles. The distance to Ozark is 40 miles, to Dothan 65 miles. All of these distances are given by rail. There are no more manufacturing and industrial enterprises in Troy to-day than were there at the time the Board of Trade of Troy filed their petition complaining of the rates before the Commission, but there are eight or ten more mercantile establishments. There are neither more or less manufacturing and industrial enterprises in Troy now than in 1890, but there are more mercantile houses, probably about a dozen.

3rd. Answering the third cross. If a change of rates, as prayed for to the Commission, should result in a revision of the rates to Ozark, Dothan, Brantley, and Seawright, and the other intermediate stations, so as to make the rates to these places correspondingly low, the effect would be to
430 benefit my business and the business of Troy and said intermediate stations and the territory around Troy and on the lines of the Georgia Central and Alabama Midland companies. Ozark is a competitive point in the sense that two railroads under different systems enter said town. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark extension, are located near together, but I do not know the distance, but they are small towns without capital and without business. It is a fact that Brantley is on the M. & G. road, and that Luverne is the southern terminus of the Luverne branch of the Alabama Midland, but the distance is about 12 miles between them. They are competitive points to the extent of competing for the business of the territory between them; outside of this they are not competitive. It would be better for the business of Troy than the present rates if the rates to Troy were put on the same basis with Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Ariosto, and other points on the M. & G., the M. & E., and Alabama Midland railroads were also put upon the same basis, for the reason that Troy's strongest competitors are Montgomery and Columbus, which enjoy rates that Troy does not, but under the new rate Troy would be on an equal footing with these points.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation lines; I have never

operated any, nor have I ever been employed in that line of business. I am able to state intelligently and accurately the effect of an adjustment of rates to Troy from the West on the Alabama Midland, on the same basis as rates to Montgomery, and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy, or such other stations, from my business observation and experience. I did not in my answer to the 8th direct interrogatory state that the aggregate revenue would be increased or diminished by such an adjustment of rates. The matter of fixing and adjusting rates on railroads or other transportation lines is a difficult, intricate, and complicated thing, but as to the time and study required to master in that line of business, some grasp it more readily than others. Never having been interested in the railroad business, I am not prepared to state whether or not I am better capacitated to fix and adjust rates and run railroads successfully than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to the stations east of Troy and the other intermediate towns on the lines of the Georgia Central and Alabama Midland roads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, or made relatively equal to the Montgomery rates, the effect upon my business and the business of Troy would be to increase such business, and to increase the tonnage of traffic hauled to Troy, and the aggregate volume of business of Troy would be increased, but it would take time to develop the extent of such increase. My reason for stating that such would be the effect is that Troy has the same competition with these intermediate stations now that she would have then, but she would have less competition from Montgomery and Columbus; consequently she would have less competition then than she does now.

5th. Answering the fifth cross. I did not in my answer to the 9th direct interrogatory state that there was any material difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. It is a fact that said river is crossed at Columbus by the M. & G., but I do not know whether it is there crossed by the Savannah & Western or not. It is crossed between Columbus and Eufaula by the S. A. & M. Ry., and at Eufaula by the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola and Atlantic. I can not state definitely the distance from Opelika, Alabama, to Columbus, Georgia, by rail, but I think it is about 50 miles. There are two railroads that centre and cross at Opelika controlled by the same system. I do not know the population of Opelika.

432 *Answer of J. B. Corcoran to the direct and cross interrogatories propounded to him in the above-entitled cause.*

J. B. CORCORAN, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is J. B. Corcoran; I reside at Troy, Alabama; am agent for the Alabama Midland Railway. I have resided at Troy about seven years, and have been engaged in the railroad business about ten years.

2nd. Answering the second direct interrogatory. I have never known any cotton to be shipped from Troy via Montgomery to New Orleans, and for that reason can not further answer this interrogatory.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, and St. Louis, and other Ohio River points, to Troy via Montgomery they are shipped under a through bill of lading, and for an aggregate through rate which is inserted in the bill of lading. Generally there is no transfer of such goods at Montgomery from the cars in which they are brought to that city to the cars on the Alabama Midland and Georgia Central companies unless the shipment is less than a carload; although the agent, when he has time and cars, may transfer carload lots for the purpose of saving mileage. I can not say what extra expense, if any, is incurred by the roads at Montgomery on such shipments. I am not able to state how the terminal expenses of Troy on such shipments to Troy compare with the terminal expenses at Montgomery on through shipments from said cities to Montgomery, or whether these terminal expenses are greater or less at Troy than at Montgomery.

4th. Answering the fourth direct interrogatory. I do not know the population of Troy. I think there are about 50 mercantile houses or stores here. There the following manufacturing enterprises here, so far as I can recall: Troy Fertilizer Co., Henderson Knitting Mills, Troy Ice Co. Industrial enterprises are: The water works, electric light works, and other small industries I can not now name. There are two railroads, the Alabama Midland and the Georgia Central. The Alabama Midland runs to Bainbridge, Georgia. The Central comes in from Columbus, Georgia, and goes to Seawright. We have two telegraph offices—the Western Union and Postal. The character of the territory naturally tributary to Troy is agricultural and timber lands, but I can not state the population.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

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Cross-interrogatories:

1st. Answering the first cross. My answer to the second direct interrogatory that no cotton is shipped from Troy via Montgomery to New Orleans is based upon my own experience as agent for the Alabama Midland road, and I can only speak from information as to the Georgia Central that it ships no cotton that way. My answer to the third direct interrogatory is based upon observation in the line of my duties as agent of the road. I did not state in answer to the direct interrogatories that cotton when shipped from Troy via Montgomery to New Orleans or Mobile went through in the same cars in which it was shipped from Troy, and for that reason I can not further answer this cross-interrogatory on that subject, nor on the subject of the expense to the roads at Montgomery on such shipments. I have never had any class goods shipped from Louisville, Cincinnati, and St. Louis, or other Ohio River points, via Montgomery to Troy for my individual account, but in the line of my duties as agent have handled the bills of lading on such shipments, and have observed that the through rate on such shipments was specified in the bills of lading. My testimony in answer to the direct interrogatory as to the transfer or nontransfer of freights shipped from the west via

Montgomery to Troy, and as to carload lots coming through in the same cars in which they are shipped from the initial point, is based upon observation and experience in the line of my duties as agent, because, if such transfer was made at Montgomery, it would be shown by the freight bill, and these freight bills, as a general thing, do not show that such transfers have been made at Montgomery, but indicate that the cars have come through. I can not state what expense, if any, is incurred by the roads at Montgomery on such shipments by the Alabama Midland between Montgomery and Troy. I do not know of my own personal knowledge how the terminal expenses of Troy on through shipments to Troy compare with the terminal expenses at Montgomery on through shipments from said cities to Montgomery.

2nd. Answering the second cross. My recollection is that the population of Troy, as shown by the last census, is 3,500. I think there are about 50 mercantile houses or stores in Troy. There is only one wholesale merchant; the others are either wholesale and retail combined, or retail. All of said merchants buy from the East and from the West. I am not able to state what the volume of trade of Troy is in any given year. I do not know the number of bales of cotton received in Troy in 1893. As stated in my answers to the direct interrogatories, the following manufactures are now in Troy, so far as I can now recall them: The Troy Fertilizer Works, The Henderson Knitting Mills, The Troy Ice Company. The following industrial enterprises: The electric light works, the water works, the compress. I do not know the amount of capital invested or the number of hands employed. I do not know the amount of capital invested in the mercantile, manufacturing, and industrial enterprises in the city of Troy. Troy is 85 miles from Columbus; 71 miles from Eufaula; 53 miles by Alabama Midland road to Montgomery; 66 miles to Luverne; 26 miles to Brantly on the M. & G. R. R.; 40 miles to Ozark, and 67 miles to Dothan. All of these distances are estimated by rail. I do not know of any more manufacturing, mercantile, and industrial enterprises now in the city of Troy than were here at the time the board of trade of Troy filed their petition complaining of rates to
434 the Interstate Commerce Commission. I think there about the same number here now as ther' were in 1890.

3rd. Answering the third cross. Witness does not answer so much of this cross-interrogatory as is predicated upon the sixth direct interrogatory, for the reason that the sixth direct interrogatory was not propounded to him, and he made no answer thereto. I am not able to state whether the Georgia Central Railroad, known as the Ozark Extension, and the Alabama Midland Railway make Ozark a competitive point. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located within about three-quarters of a mile of each other, but I can not state whether or not they are practically competitive points. I do not know the distance from Brantly, on the M. & G., to Luverne, the southern terminus of the Luverne branch of the Midland, nor do I know whether or not said places are practically competitive points. I am unable to state what the effect would be upon the business of Troy if the rates to Troy were put upon the same basis with Montgomery rates, and if at the same time the rates to Union Springs, Brantly, Luverne, Charlton, Ariosto, and other points on the M. & E., M. & G., and Alabama Midland railroads were also put upon the same basis.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation line; I have never operated a railroad or other transportation line; I have never been in the rate-making department of the railroad business. I have not undertaken to state in my answers to the direct interrogatories what would be the effect of an adjustment of rates from the East to Troy, on the Alabama Midland Railway, on the same basis as Montgomery rates, or whether it would increase or diminish the tonnage of traffic hauled to Troy or such other stations, nor whether the aggregate revenue of the road would be increased or diminished, the direct interrogatories on this subject not being propounded to me. I have never had anything to do with fixing and adjusting rates on railroads or other transportation lines, and I think it is a delicate, difficult, and complicated thing, requiring years of constant study and experience to master in that line. I do not think that I am better capacitated to fix and adjust rates and to run railroads successfully than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to Troy and other intermediate stations on the Alabama Midland and Georgia Central roads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy and made relatively equal to the Montgomery rates, I am not able to state what effect it would have on the business of Troy, or whether it would increase or diminish the tonnage of traffic hauled to Troy, or whether it would increase or diminish the aggregate volume of business of Troy, as I have never investigated this subject.

5th. Answering the fifth cross. The ninth direct interrogatory, as to the difference of circumstances and conditions effecting the transportation of traffic of Columbus, Eufaula, and Opelika on one hand and Troy on the other, was not propounded to me, and I did not undertake to answer it. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola, and said river is crossed at Columbus by the Savannah & Western and Mobile and Girard railroads, and between Eufaula and Columbus by the Savannah, Americus & Montgomery Railway, and at Eufaula by the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola & Atlantic railroads. The distance from Opelika to Columbus, Georgia, by rail is 29 miles. The Western and Central railroads (i. e., Savannah & Western branch of the Central) centre and cross at Opelika. There is also the E. Ala. & C., a local road running out to Roanoke from Opelika, which is a part of the Central Railroad system. I am not sufficiently informed to state what is the population of Opelika, Alabama.

436 *Answers of E. H. Bashinsky to the direct and cross interrogatories propounded to him in the above-entitled cause.*

E. H. BASHINSKY, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is E. H. Bashinsky; residence, Troy, Alabama; am in the cotton business; I have resided in Troy 13 years, and have been engaged in this business 13 years.

2nd. Answering the second direct interrogatory. There has been no cotton shipped from Troy via Montgomery to New Orleans in the last three

years. If cotton should be shipped this way it would be shipped in carloads and compressed. There are always L. & N. cars in Troy which could be utilized in such shipments. I know of no extra expense to the roads at Montgomery.

3rd. Answering the third direct interrogatory. Class goods are shipped from Louisville, Cincinnati, and St. Louis, and other Ohio River points to Troy via Montgomery, under a through bill of lading for an aggregate through rate. There is no transfer of such goods from the cars in which they are brought to that city to cars on the roads of the Georgia Central or Alabama Midland companies when such freight is shipped in carload lots. I know of no extra expense incurred by the roads at Montgomery on such shipments. I do not know the terminal expenses at Troy on such through shipments to Troy nor those at Montgomery on through shipments from said cities to Montgomery, but because the clerical force at Troy is less than at Montgomery, I should say her terminal expenses are less. Furthermore there are no switch engines necessary to be kept in use at Troy.

4th. Answering the fourth direct interrogatory. The present population of Troy is somewhere between four and five thousand. There are between 40 and 50 mercantile houses in Troy. The manufacturing enterprises at Troy are as follows: The cotton factory, the fertilizer works, the ice factory, machine shop. The fertilizer works embrace an acid chamber and oil mill. The industrial enterprises are the compress, waterworks, the electric-light works, and seven cotton warehouses. There are two railroads, the Central and Alabama Midland. The Midland connects at Montgomery with the L. & N., and at Bainbridge, Georgia, with the Savannah, Florida & Western. The Central (Mobile & Girard) connects at Columbus, Georgia, with the Georgia Central. The territory around Troy consists of uplands, agricultural, and has a population of about 75,000.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of by the Board of Trade of Troy on my business and the business of Troy is that cotton, which Troy would otherwise get, is shipped to Montgomery on account of the advantages which Montgomery enjoys under its rates, Montgomery having this advantage especially in respect to Charleston and Port Royal. Montgomery, being open to the port of New Orleans, is able to ship cotton to Europe via New Orleans, obtaining in Europe the premium on cotton shipped via New Orleans. This premium Troy is unable to obtain on account of the excessive
437 high rate of freight to New Orleans. A large proportion of the territory intersected by the Alabama Midland Railroad is naturally Troy's territory, and for many years had been under the control of Troy, but on account of the better rate of freight Montgomery has on class goods Montgomery is now controlling the business of the territory that naturally belongs to Troy. There is Columbus controlling Troy's territory in business along the line of the Mobile & Girard Railroad, especially on the M. & G. extension. Troy should get the business of Shady Grove, Kent, Ansley, Banks, Brundidge, Tennille, and Ariosto, which Montgomery now gets, and Troy would get them if she had equal rates with Montgomery.

7th. Answering the seventh direct interrogatory. I have never visited Apalachicola Florida. From all the information I have, that is, historical information, I will state that the port was destroyed by Federal troops during the war, and it is impossible for deep-class vessels to enter the harbor at Apalachicola. I can only say from information that vessels of large draft can not enter the harbor, but have to stop about 18 miles outside, and only small vessels can enter said harbor. Goods would have to be transferred at Apalachicola from or to the river boat to or from the ocean or Gulf vessel by lighterage, and would have to be carried about 18 miles between the boats. As far as I am informed, groceries are not shipped by river from or to Columbus or Eufaula via Apalachicola to or from Mobile, New Orleans, or Atlantic ports. The route by river from Columbus and Eufaula via Apalachicola to Ohio River points or to New York or Northeastern cities is not a practicable route for through business for the reason that the terminal facilities at Apalachicola are very bad. The route to Northern Atlantic ports would be a very long and hazardous one. The rate of insurance would be an item to be added to the expenses of shipping, and the general slowness of transportation in the line of goods mentioned would render business almost impossible. Upon information, I state that the harbor at Apalachicola is used mainly, if not exclusively, for the lumber business.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railroad east of Montgomery were fixed and adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, the effect on Troy would be to increase the tonnage considerably, for the reason that it would add largely to the business in Troy. I do not believe that there would be any material change in the business of these small stations, because their business is too small to be effected much one way or the other. If the business of Troy should be so increased the business of the railroad would also be increased and the revenue of the road thereby increased.

9th. Answering the ninth direct interrogatory. I do not know any material difference between the circumstances and conditions effecting the transportation of traffic to and from Columbus, Eufaula, and Opelika on the one hand and Troy on the other, and there is no such difference as justifies the present excess of the Troy rates over those to such other cities.

10th. Answering the tenth direct interrogatory. Cotton from Port Royal and Charleston over the Alabama Midland passing through Troy has a rate from Montgomery to Port Royal and Charleston of 5 cents a hundred less than Troy. The haul from Montgomery to Charleston and Port Royal is 52 miles longer than the haul from Troy to those points. On class-rate goods there is the same discrimination against Troy. Class-rate goods, shipped from New York, Boston, Baltimore, and Philadelphia, passing through Troy to Montgomery over the Alabama Midland Railway, have a cheaper rate to Montgomery than to Troy, although the distance to Troy is 52 miles nearer than the distance to Montgomery.

Cross-interrogatories :

1st. Answering the first cross. My answer to the second direct interrogatory as to the shipment of cotton from Troy via Montgomery to New Orleans in the same cars in which it was shipped from Troy, and the

expense of a transfer at Montgomery, is based on my own knowledge. My answer to the third direct interrogatory as to whether class goods shipped from Ohio River points via Montgomery to Troy were shipped upon a through bill of lading and for a through rate, and as to the transfer of such freight at Montgomery to the Central and Alabama Midland roads, is based upon information acquired directly from persons in Troy who are engaged in the business in which such shipments are made. Three years ago I had cotton shipped via Montgomery to New Orleans from Troy. I do not know personally whether that cotton was carried through in the same cars in which it was shipped from Troy, and, as stated above, I do not state on my own personal knowledge whether there is any extra expense to the roads at Montgomery on such shipments. I have never had class goods shipped from Ohio River points via Montgomery to Troy. I can state from my own personal knowledge that such goods are shipped from those points to Troy via Montgomery under a through bill of lading and for an aggregate through rate. I have already stated that I do not know of my own personal knowledge whether there is a transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the roads of the Georgia Central and Alabama Midland companies, and what expense, if any, is incurred by the roads at Montgomery on such shipments from Montgomery to Troy. I do not know the terminal expenses at Troy on such through shipments to Troy, nor the terminal expenses at Montgomery on such through shipments from said cities to Montgomery, but in my opinion the terminal expenses at Troy are less than those at Montgomery on such shipments for the reason that Troy keeps no switch engine, and has less clerical force than Montgomery has. I answer as to this subject from my own personal knowledge about the switch engine and the clerical force.

2nd. Answering the second cross, I do not know what the population of Troy is as shown by the last census. There is about 40 or 50 mercantile houses in Troy. There is only one wholesale merchant. I am not very well posted on the nature of the business done here, but I think the other merchants are wholesale and retail combined, or retail. I can not state how many merchants buy goods from the East and how many buy from the West. The entire volume of trade of Troy annually is about \$2,000,000. This is an estimate made from my business observation. There were about 40,000 bales of cotton received in Troy during the season of the year 1893. The following manufacturing enterprises are now located in the city of Troy: The fertilizer factory, with a capital of \$50,000; the cotton mills, the amount of capital invested I do not know; ice factory, amount of capital invested unknown to me. I do not
439 know the number of hands employed in any of these enterprises.

The industrial enterprises are as follows: The compress, with \$50,000 capital, employing 30 or 40 hands; waterworks, amount of capital and number of hands unknown; electric-light works, capital and number of hands unknown; seven warehouses—I do not know the amount of capital, but they employ 30 or 40 hands. I am not able to state the amount of capital invested in the mercantile, manufacturing, and industrial enterprises in the city of Troy. Troy is 85 miles from Columbus, 75 miles from Eufaula, 52 miles from Montgomery, 70 or 75 miles from Luverne, 16 miles from Brantly, 30 miles from Ozark, and 51 or 52

miles from Dothan. The distances are all estimated by rail, and according to my best knowledge. There are no more manufacturing, industrial, or mercantile enterprises now in Troy than there were at the time the Board of Trade of Troy filed their petition complaining of the rates before the Interstate Commerce Commission. There is one factory less here now than in 1890—the shoe factory has been closed. If the change of rates as prayed for should result in a revision of the rates to Dothan, Brantley, Ozark, Seawright, and other intermediate stations, so as to make the rates to such stations correspondingly low, the business of Troy would be benefitted by being enlarged on account of this lower rate to Troy. The effect on these other stations would not be as marked or as much felt as Troy, on account of the natural inconvenience of the business to these places as compared with the business of Troy. The cotton business in Troy would be benefitted by a better rate to Troy. It is a fact that Ozark is a competitive point to the extent that the Georgia Central road, known as the Ozark Extension, and the Alabama Midland roads cross there, but from a business point of view it could hardly be called a competitive point on account of the smallness of the business done there; it is not enough to compete for. Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located within half or three-quarters of a mile of each other, but they can not properly be said to be competitive points; because there is not enough business there to compete for. Brantley, on the M. & G., and Laverne, the southern terminus of the Midland road, are about 12 miles apart. There is, of course, competition going on between these two points, but it is not marked, and it is not one that is hurting either point. They are dividing the territory between the two towns. The effect upon the business of Troy if the rates to Troy were put upon the same basis with the Montgomery rates, and at the same time the rates to Union Springs, Brantley, Laverne, Charlton, Ariosto, and other points along the M. & G., M. & E., and Alabama Midland roads were put upon the same basis, would be that the business of Troy, which is a much larger interest, would be considerably increased, but it would not have much effect on the other towns on account of the smallness of their business interest.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation lines. Have never operated a railroad or other transportation line. I have never been employed on engaged in that line of business. I am able to state what effect an adjustment of rates from the East to Troy on the Alabama Midland Railway upon the same basis as rates to Montgomery would have, and whether it would increase or diminish the tonnage of traffic hauled to Troy and such other stations from my knowledge of the business as to the amount, nature, and enterprise carried on in Troy as compared to the other places
440 mentioned. I am able to state that the aggregate revenue would be increased on account of the business in Troy and out of Troy. I suppose the matter of fixing and adjusting rates on railroads or other transportation line is a delicate, difficult, and complicated thing, requiring years of experience to master. I do not think that I am better capacitated to fix and adjust rates or run railroads successfully than experienced and skilled men who have devoted a lifetime to this business. If the rates from the East to the stations east of Troy and other intermediate points on the

Alabama Midland and Georgia Central lines south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal to the Montgomery rates, the effect would be to increase my business and the business of Troy, while the effect would not be so marked in the smaller places on account of the insignificant business done there. The aggregate volume of business would be increased in Troy. I am not able to state the extent of such increase.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Columbus and Eufaula are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and the Mobile and Girard railroads, and between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway, and at Eufaula by the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola and Atlantic railroads. I do not know the distance from Opelika to Columbus, Ga. Two railroads concentre and cross at Opelika. I do not know positively what the population of Opelika is, but I think it is about 5,000.

441 I, William S. Thorington, the commissioner named in the commission hereinbefore referred to and hereto attached, do hereby certify that pursuant to an agreement of the attorneys representing the parties, Patrick White was selected and appointed as the stenographer to take down the testimony of the witnesses named in said commission, and that before entering upon the discharge of his duties the said White was duly sworn to well and faithfully take down and transcribe the testimony of the witnesses sworn and examined under and by virtue of said commission, and that the testimony of said witnesses whose names are set forth in the caption of this certificate was taken down by said stenographer after each of said witnesses had been first duly sworn to speak the truth, the whole truth, and nothing but the truth; and I further certify that by consent of counsel of the parties the signatures of said witnesses to their respective depositions were dispensed with, and that the testimony of each of said witnesses, as taken down and transcribed by said stenographer, is substantially in the language of each of said witnesses respectively; and further, that I have personal knowledge of said witnesses, and that I am not of counsel in said cause, nor of kin to any of the parties in interest, nor in any manner interested in the result thereof. I further certify that the depositions of the witness C. E. Caverly was not taken under this commission on account of the change of residence of said Caverly from Columbus, Georgia, to Atlanta, Georgia, and that the testimony of the witness Samuel J. Whiteside was not taken on account of the illness of said witness.

Witness my hand and seal this the 21st day of January, 1895.

WM. S. THORINGTON, [L. S.]
Commissioner.

442 *Answers of L. M. Bashinsky to the direct and cross interrogatories propounded to him in the above-entitled cause.*

L. M. BASHINSKY, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is L. M. Bashinsky; residence, Troy, Alabama; am engaged in the banking business. I have resided at Troy for 23 years, and have been engaged in this business for 12 years.

2nd. Answering the second direct interrogatory. There has been no cotton shipped from Troy via Montgomery to New Orleans for the last few years, but if such cotton was shipped it would be shipped in carloads and compressed. It is customary for cotton so shipped to go through in the same cars, so far as I know. I know of no extra expense to the roads at Montgomery.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, and St. Louis, and other Ohio River points via Montgomery to Troy, they are shipped under a through bill of lading and for an aggregate through rate—the through rate as far as Montgomery, and the local rate is added from Montgomery here. This is the through rate to Troy. There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the lines of the Georgia Central and Alabama Midland companies; I know about this because the original Western car arrives here. I know of no extra expense incurred by the roads at Montgomery on such shipments any more than would be incurred between Montgomery and another point. I am not able to state how the terminal expenses at Troy on such through shipments to Troy compare with the terminal expenses at Montgomery on shipments to Montgomery. Terminal expenses are usually lower at smaller towns, but I have no personal knowledge of the terminal expenses at Montgomery or Troy.

4th. Answering the fourth direct interrogatory. I do not know, but I think the population of Troy is about 4,500. There are about 80 houses of general merchandise at Troy. There are the following manufacturing enterprises at Troy: The knitting mill, the furniture factory, two planing and saw mills, fertilizer works, oil mill and acid chamber. The industrial enterprises are the compress, waterworks, electric-light plant, two steam ginneries, and six cotton warehouses. The transportation facilities are two railroads—the Alabama Midland and the Central of Georgia Railroad. The Alabama Midland is part of the Savannah, Florida & Western road, and the Georgia Central is an independent system. The character of the territory naturally tributary to Troy is agricultural and timber lands, producing building material and stave lumber. There are some towns on the railroad and off the railroad in this territory. The population is about 40,000.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on the business of Troy is to diminish the business and trade, and the effect on the towns and territory

around Troy, and on the lines of the Midland and Central railroads, I am unable to state. It has reduced the banking business in which I am engaged in Troy.

7th. Answering the seventh direct interrogatory. I have never visited Apalachicola, Florida. I do not know of my own personal knowledge what character of vessels can enter the harbor of Apalachicola, and therefore can not state whether the vessels which sail from Apalachicola to Mobile or New Orleans, or around Florida Keys to New York, etc., can enter said harbor. Nor do I know if goods have to be transferred at Apalachicola from or to the river boats to or from the ocean or Gulf vessels, nor how far such goods would have to be carried if such transfer was made, nor on what kind of a vessel. I state on information that groceries can not be shipped from Columbus or Eufaula (or to them) by river via Apalachicola from or to New Orleans, Mobile, or Atlantic ports. I do not think this route is a practicable route for through business. I think the harbor at Apalachicola is used mainly, if not exclusively, for the lumber business.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railroad east of Montgomery were fixed and adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, I think the effect would be to increase the tonnage of traffic hauled to Troy, but I am not prepared to say what the effect would be on the other stations. I think the aggregate revenue of the road would be increased by such a readjustment of rates.

9th. Answering the ninth direct interrogatory. I do not know of and can not state any material difference effecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other. There is no such difference as justifies the present excess of the Troy rates over those of such other cities, because there is no material difference effecting the transportation to such places and to Troy.

10th. Answering the tenth direct interrogatory. I do not know and can not set forth any other matter or thing that may be a benefit or advantage to either of the parties to this cause, or that may be material to the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. My answer to the second interrogatory is not based on actual shipments of cotton from Troy to New Orleans, because no such shipments are now made, but predicated my answer upon what is the usual custom in such cases when such shipments are made, and on experience acquired by me as president of the compress in Troy. I made have had some cotton shipped from Troy via Montgomery to New Orleans in the past years, but I do not now recollect, and for that reason I can not state whether it is carried in the same cars in which it is shipped from Troy to New Orleans, or whether any extra expense to the roads at Montgomery is incurred. I will state further in this connection

444 that the Alabama Midland Railway refuses to pay for compressing cotton to go in the direction of Montgomery, which fact, in connection with the local rate from here to Montgomery, prevents shipments of cotton in that direction from Troy. My answer to the third direct interrogatory, as to the shipment of class goods from Western points via

Montgomery to Troy under through bills of lading, and the transfer of such goods at Montgomery to the Georgia Central and Alabama Midland railroads and the expense of such transfer, is based upon my general business knowledge. I have never had class goods shipped from Louisville, Cincinnati, St. Louis, or other Ohio River points via Montgomery to Troy. I can state that these goods are shipped for an aggregate through rate, because I have seen the published rates of the railroads, and have also seen bills of lading on such shipments. I do not know of my own personal knowledge how the terminal expenses of Troy on such shipments to Troy compare with the terminal expenses of Montgomery on such through shipments from such places to Montgomery.

2nd. Answering the second cross. The last census showed the population of Troy to be between 3,600 and 3,700. There are about 80 mercantile houses in Troy. There is but one exclusively wholesale merchant here, the other merchants do a wholesale and retail business combined, or a retail business. I think all merchants buy from the East and from the West. The volume of business of Troy annually exceeds \$4,000,000, but I do not know exactly. My answer to the 6th question, as to the volume of trade, is based on my experience in the banking business, which gives me the opportunity of knowing the fact. There were about 40,000 bales of cotton received in Troy during the year 1893. The following manufacturing enterprises are now in the city of Troy: The cotton mills, with an original investment of \$30,000 and additional amounts invested since which I can not now remember, employing from 60 to 70 hands; the furniture factory, the amount of capital and number of hands I do not know; 2 planing and saw mills, the amount of their capital and the number of hands I do not know; the fertilizer works, with a capital of \$150,000; I do not know the number of hands. The pay roll of this factory runs from 200 to 500 per week. This embraces the oil mill and acid chamber. The following are the industrial enterprises: Compress, with a capital of \$50,000, employing during the season about 25 hands; the waterworks, I do not know either as to the capital or the number of hands; electric light plant, the amount of capital and the number of hands I do not know; two steam ginneries, the amount of capital and number of hands unknown; 6 warehouses, the amount of capital invested and the number of hands employed unknown to me. I am unable to state how much capital is invested in the mercantile, manufacturing, and industrial enterprises in Troy. It is 85 miles from Troy to Columbus, 70 miles to Eufaula, 70 miles by the Central and 52 miles by the Midland to Montgomery, between 50 & 60 miles to Laverne, 24 miles to Brantley, 40 miles to Ozark, 60 miles to Dothan. All the above distances are given by rail. I do not know that there are any more manufacturing, mercantile, or industrial enterprises now in Troy than were here at the time the Board of Trade filed their petition to the Interstate Commerce Commission. There is a cotton compress now in Troy that was not here in 1890. There are some less business houses now than in 1890; how many less I am not able to state.

445 3rd. Answering third cross. If a change of rates, as prayed for by the Board of Trade of Troy to the Interstate Commerce Commission, should result in a revision of the rates to Dothan, Brantley, Ozark, and Seawright and other intermediate stations, so as to make the rates to these

stations correspondingly low, the effect on the business of Troy would be to benefit business in Troy, and the stations named would also be benefitted by such a readjustment of rates. My business would also be correspondingly benefitted. It is a fact that the Georgia Central Railroad, known as the Ozark Extension, and the Alabama Midland Railway make Ozark a competitive point. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located within a half or three-quarters of a mile of each other, but they are not practically competitive points, because they are small stations having only a few stores, and doing but very little business. Brantley, on the M. & G. R'd., is about 12 miles south of Luverne, the southern terminus of the Luverne branch of the Alabama Midland, and they are probably competitive points for the territory between the two places. From my information the rates of freights on class-rate goods to Brantley are considerably more than they are to Luverne, hence the operation of competition is not apparent, judging by that. If the rates to Troy were put upon the same basis as the Montgomery rates, and if at the same time rates to Union Springs, Brantley, Luverne, Charlton, Ariosto and other points on the M. & E., M. & G., and Alabama Midland railroads, were also put upon the same basis, the effect would be that it would benefit Troy, but not to that extent if Troy could enjoy a better rate than the smaller towns just mentioned, which she claims she is entitled to just the same as Montgomery now enjoys advantages over her small towns.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation lines. I have never operated a railroad or been employed or engaged in that line of business. I am unable to state the effect of a readjustment of rates from the East to Troy on the Alabama Midland on the same basis as rates to Montgomery, and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy or such other stations, because of the fact that by the enjoyment of lower rates of freight, Troy would be able to widen out her trade, employ more capital, and have the opportunity of selling more goods to the territory tributary to Troy, and thereby create a greater demand for goods to be shipped into the town for that trade, and thus increase the revenue and tonnage of the railroad. I suppose it is a fact that the matter of fixing and adjusting rates on railroads and other transportation lines is a delicate, difficult, and complicated thing, requiring years of study and experience to master in that line, and it is something that I do not pretend to know anything about, but it seems to be that it would not be difficult to readjust the rate to one town. I do not think that I, having no experience in this line of business, am better capacitated to fix and adjust rates, and run railroads successfully than experienced and skilled men who have devoted a lifetime to the business. I would state that it does not seem to me that railroads would find any labor in readjusting the rates to Troy as we ask for, as they could easily copy their rate sheets to Columbus or Montgomery by so establishing the readjustment to Troy. If the rates from the East to the stations east of Troy and to other intermediate points on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal to the Montgomery rates, the effect on the business in Troy would be to benefit it, but not to that extent if they would

give Troy the advantages that they give to Montgomery and Columbus; that is, advantages over her little towns. These other little towns would be naturally benefitted. I think it would increase the tonnage of traffic hauled to Troy.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and the Mobile & Girard railroads, and between Columbus and Eufaula by the Savannah, Americus & Montgomery railway, and at Eufaula by the Central and at Alaga by the Alabama Midland and at Chattahoochee by the Pensacola and Atlantic railroads. I do not know the distance from Opelika, Alabama, to Columbus, Georgia, by rail. I think there are two railroads crossing at Opelika. I do not know the population of Opelika, but I think it is about 4,000.

447 *Answers of J. W. Nall to the direct and cross interrogatories propounded to him in the above-entitled cause.*

J. W. NALL, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is J. W. Nall; residence, Troy. I am agent for the Central Railroad at Troy. I have resided at Troy all my life except about three years. I have been such agent about two years.

2nd. Answering the second direct interrogatory. I do not know, when cotton is shipped from Troy via Montgomery to New Orleans, whether it is shipped in carloads, compressed, or uncompressed. I do not know whether or not it is carried on from Montgomery in the same cars in which it is shipped from Troy or whether it is transferred at Montgomery to cars on the L. & N. R. R. I do not know of any extra expense to the roads at Montgomery on such shipments.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, and St. Louis and Ohio River points to Troy via Montgomery, they are generally shipped under a through bill of lading carrying a through rate. Occasionally such freight is transferred from car to car at Montgomery, but frequently we get it in through cars. I know of no extra expense to the roads at Montgomery on such shipments. I do not know how the terminal expenses at Troy on such through shipments compare with the terminal expenses at Montgomery on through shipments from those cities to Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is, I think, about 5,000; that I do not know definitely. I do not know at this time the number of mercantile establishments in Troy. The following are the manufacturing establishments: Troy Fertilizer Co., Ice factory, Henderson Knitting Mills, now suspended. The industrial enterprises are as follows: Troy saw & planing mills, another planing mill, electric-light works, water works, compress, 6 cotton warehouses. The character of the territory naturally tributary to Troy is agricultural. I do not know the population of this territory.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

Cross-interrogatories :

1st. Answering the first cross. I did not know the facts called for in the second direct interrogatory, and therefore I make no answer to the first cross-interrogatory predicated upon the second direct interrogatory. My answer to the third direct interrogatory as to the shipment of goods from Western points via Montgomery to Troy under through bills of lading and for through rates is based upon my knowledge acquired in the line of my duties as agent. I answered the third direct interrogatory as to the transfer of freight when such freight was shipped on through bill of lading, from information acquired in the line of my duties as agent at this place. I have never had any class goods shipped from
 448 Louisville, Cincinnati, and St. Louis and other Ohio River points for myself. I do not know of my own personal knowledge how the terminal expenses at Troy on such through shipments compare with the terminal expenses at Montgomery on through shipments from said cities to Montgomery.

2nd. Answering the second cross. I do not know the population of Troy as shown by the last census. As stated in my direct interrogatory, I can not state the number of mercantile houses in the city of Troy. We only have one exclusively wholesale merchant in the city of Troy, and I can not state at this time the number of retail merchants. I do not know how many of said merchants buy goods from the East nor how many from the West. I do not know the volume of trade of Troy in any given year. I can not state how many bales of cotton were received in Troy during the year 1893. I am not able to state the manufacturing and industrial enterprises in the city of Troy further than I have stated them in my answer to the 4th direct interrogatory; nor am I able to state the amount of capital invested in any of them, nor the number of hands employed. I do not know the amount of capital invested in the mercantile, manufacturing, and industrial enterprises in Troy. The distance from Troy to Columbus is 85 miles, 71 miles from Eufaula, from Montgomery, 71 miles on the Central and 52 on the Midland; I think it is 52 miles to Laverne on the Alabama Midland; to Brantley on the M. & G. is 26 miles; Ozark is about 40 miles by the Midland; I do not remember the distance to Dothan. All the above distances are given by rail. I do not think there are any more mercantile, manufacturing, or industrial enterprises now in the city of Troy than were here at the time the Board of Trade of Troy filed their petition complaining of rates before the Interstate Commerce Commission. I can not state whether there are more or less enterprises now in Troy than in 1890.

3rd. Answering the third cross. The 6th direct interrogatory was not propounded to me, and therefore I make no answer to this third cross in so far as the same refers to railroad rates to Troy and the readjustment of the same to the other points named in the cross. I think it is a fact that the Georgia Central, known as the Ozark Extension, and the Alabama Midland make Ozark a competitive point. I do not know the distance from Ariosto, on the Alabama Midland, to Charlton, on the Central. They are both local stations, and I can not state whether they are competitive points or not. I do not know the exact distance from Brantley, on the M. & G., to Laverne, the southern terminus of the Laverne Branch of the Alabama Midland; but I do not think that they or either of them

are competitive points. I do not know what would be the effect upon the business of Troy if the rates to Troy were put upon the same basis with Montgomery rates and if at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Ariosto, and other points on the M. & E., M. & G., and Midland railroads were put upon the same basis.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportations line'. I have never been engaged in the operating or rate making department of railroads, and have only been employed as local agent. I did not in my answers to the direct interrogatories undertake to state what would be the effect of the proposed readjustment of rates from the East to Troy on the Alabama Midland and the other towns referred to in said interrogatory. I think the matter

of fixing and adjusting rates on railroads and other transportation lines is a delicate, difficult, and complicated matter, requiring years of study and experience to master in that line. I do not think that I, having no experience, am better capacitated to fix and adjust rate' and run railroads successfully than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to stations east of Troy and other intermediate points on the Georgia Central and Alabama Midland roads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal to the Montgomery rates, I am unable to state what the effect would be upon the business of Troy, or what effect it would have towards increasing or diminishing the tonnage of traffic hauled to Troy or upon the aggregate volume of business at Troy.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and the Mobile and Girard railroads. I do not know whether it is crossed between Columbus & Eufaula by the S. A. & M. Ry. or not. Said river is crossed at Eufaula by the Central. I do not know whether it is crossed at Alaga by the Alabama Midland, nor whether it is crossed at Chattahoochee by the Pensacola & Atlantic Railroad. The distance from Opelika to Columbus, Georgia, is 29 miles. Two railroads concentre and cross at Opelika. I do not know the population of Opelika.

450 *Answer of Charles B. Goldthwaite to the direct and cross interrogatories propounded to him in the above-stated cause.*

CHARLES B. GOLDTHWAITE, being duly sworn, deposes, and says :

1st. Answering the first direct interrogatory. My name is Charles B. Goldthwaite ; residence, Troy, Alabama ; I am engaged in the drug business. I have resided at Troy 35 years, and have been engaged in such business 25 years.

2nd. Answering the second direct interrogatory. When cotton is shipped from Troy via Montgomery to New Orleans it is shipped in carloads and compressed. I am not sufficiently informed to state whether the cotton so shipped is carried from Montgomery in the same cars in which it is shipped from Troy, or whether it is transferred to other cars. Nor can I state whether there is any extra expense to the roads at Montgomery either per 100 pounds or per bale.

3rd. Answering the third direct interrogatory. When class goods are shipped from Louisville, Cincinnati, and St. Louis, and other Ohio River points to Troy via Montgomery, they are shipped under a through bill of lading from those cities to Troy, and upon a through rate to Montgomery, and upon a local rate to Troy added. There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the roads of the Alabama Midland and Georgia Central companies, unless the freight is shipped in less than carload lots. I know of no extra expense incurred by the roads at Montgomery on such shipments. The terminal expenses at Troy on such through shipments to Troy, I think, would be less than the terminal expenses at Montgomery on such through shipments to Montgomery, on account of the fact that the clerical expense or force at Montgomery are greater than they are at Troy.

4th. Answering the fourth direct interrogatory. The population of Troy is between 4,000 and 5,000. There are between 75 and 100 mercantile houses in Troy. There are about eleven mercantile and industrial enterprises that I now recall. The transportation facilities of Troy consist of two railroads—the Alabama Midland and the Georgia Central. The territory tributary to Troy is agricultural and farming section, having a population of about 45,000. In this territory there are quite a number of towns accessible to Troy. These towns are small, but do considerable business.

5th. Answering the fifth direct interrogatory. The city of Opelika, Alabama, is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy, on my business and the business of Troy and towns in the territory around Troy, and on the lines of the Alabama Midland and Georgia Central (Mobile & Girard) railroads, is that it prevents us from competing with Montgomery and Columbus for business in towns
451 within the territory around Troy and on the line of these roads.

7th. Answering the seventh direct interrogatory. I have visited Apalachicola, Florida. I was there last spring and remained several days. I cannot state what character of vessels can enter the harbor of Apalachicola, except that only small vessels can do so. In my opinion, vessels which sail from Apalachicola to Mobile and New Orleans, and around Florida Keys to Atlantic ports, can not enter said harbor. Goods would have to be transferred from or to the river boats at Apalachicola to or from the ocean or Gulf vessels with lighter boats; there would have to be two transfers. I saw vessels outside the harbor being loaded, but I cannot state the distance it would be necessary to carry goods from or to the river boat to or from the ocean or Gulf vessel. The vessels I saw were being loaded with lumber. I do not know of groceries being shipped by river from or to Columbus or Eufaula via Apalachicola, to or from Mobile or New Orleans or Atlantic ports. I did not see any evidence of such shipments or of any through business at Apalachicola from or to such city's or ports. The route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, and St. Louis, and New York, and Northeastern cities is not a practicable route for through business. The harbor at Apalachicola is used mainly if not exclusively for lumber. I saw nothing but timber vessels at Apalachicola. I did not see any ocean steamers either inside or outside the harbor.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railroad east of Montgomery were fixed on the same basis as those to Montgomery, or made relatively equal with the Montgomery rates, the effect would be to greatly increase the tonnage of traffic hauled to Troy and to such other stations. I am unable to state whether the aggregate revenue of the road would be increased or diminished by such a readjustment of rates.

9th. Answering the ninth direct interrogatory. I know of no material difference between the circumstances and conditions effecting the transportation of traffic to and from Eufaula, Columbus, and Opelika on the one hand and Troy on the other. There is no such difference as justifies the present excess of the Troy rates over those to such other cities.

10th. Answering the tenth direct interrogatory. I do not know and cannot set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or that may be material to the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. My answer to the second interrogatory is based not upon personal knowledge, but upon hearsay and information. My answer to the third direct interrogatory is based upon personal knowledge. I have never had cotton shipped from Troy via Montgomery
452 to New Orleans, and, as stated, I cannot say from personal knowledge, that cotton is carried through Montgomery in the same cars in which it was shipped from Troy ; nor can I state from personal knowledge whether there is any extra expense or not to the roads at Montgomery on such shipments. The source of my information is what I have heard business men say on that subject. I have had class goods shipped from Louisville, Cincinnati, and St. Louis, and Ohio River points via Montgomery to Troy, and I can and do state on my own personal knowledge that the goods are shipped under a through bill of lading and at an aggregate through rate. I can not state from my own personal knowledge whether there is a transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the line of the Alabama Midland and Georgia Central companies. Nor can I state of my own personal knowledge what expense, if any, is incurred by the roads at Montgomery on such shipments by the Georgia Central and Alabama Midland railroads between Montgomery and Troy. Such part of my answer to this interrogatory as is not stated to be on my own personal knowledge is based upon information derived from sources of business men of the town of Troy, and not upon conjecture. I do not know of my own personal knowledge how the terminal expenses at Troy on such through shipments to Troy compare with the terminal expenses at Montgomery on such through shipments from those cities to Montgomery.

2nd. Answering the second cross. I do not remember what the last census gives as the population of Troy. There are between 75 and 100 mercantile houses in Troy. There is only one exclusively wholesale merchant; there are about a dozen wholesale and retail houses combined, and the remainder are only retail houses. I can not state how many of said merchants buy their goods from the East nor how many buy from the West. I do not know what is the volume of trade of Troy in any given year. There were about 40,000 bales of cotton received in Troy during the year

1893. There are about eleven manufacturing and industrial enterprises now in the city of Troy. The manufacturing enterprises are as follows: Fertilizer works, oil mill, 2 saw and planing mills, bottling works, machine shop, cotton factory, ice factory, furniture factory. The industrial enterprises are as follows: Electric-light plant, waterworks, 2 hotels, 6 cotton warehouses, 2 steam ginneries, compress, 2 banks, 3 printing offices, 2 telegraph lines, 2 livery and 3 sale stables. I do not know the amount of capital invested or the number of hands employed in either of these manufacturing or industrial enterprises. I am not able to state how much capital is invested in the mercantile, manufacturing, and industrial enterprises in the city of Troy. Troy is 83 miles distant from Columbus, and 75 miles from Eufaula; 52 miles from Montgomery by the Midland, and about 75 miles by the Central; about 50 miles from Luverne, about 30 miles from Brantley, about 50 miles from Ozark, and about 75 miles from Dothan. All the distances above given are estimated by the rail route. There are no more mercantile, manufacturing, or industrial enterprises now in Troy than there were at the time the Board of Trade of Troy filed their petition complaining of rates before the Interstate Commerce Commission. I am unable to state how many more or less manufacturing, industrial, or mercantile enterprises there are now in Troy than were here in 1890.

3rd. Answering the third cross. If a change of rates as prayed for by the Board of Trade of Troy to the Interstate Commerce Commission should result in a revision of the rates to Dothan, Ozark, Brantley, Sea-
453 wright, and other intermediate stations, so as to make the rates to said intermediate stations correspondingly low, I can not state what the effect would be on my business and the business of Troy, and on the business of said intermediate stations and the territory around Troy, and on the lines of the Alabama Midland and Georgia Central roads. It is a fact that the Georgia Central, known as the Ozark Extension, and the Alabama Midland railroads make Ozark a competitive point. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located within a half or three-quarters of a mile of each other, and that practically said places are competitive points; and that Brantley, on the M. & G. Rd., is about 15 miles south of Luverne, the southern terminus of the Luverne branch of the Midland Company, and practically Luverne and Brantley are competitive points. I can not state what the effect would be upon the business of Troy if the rates to Troy were put upon the same basis with the Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Ariosto, and the other points along the M. & G., the M. & E., and the Alabama Midland roads were also put upon the same basis.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation lines. I have never operated a railroad or other transportation line; my employment or engagement in that line of business is as express agent at this point, and I have been such express agent for the past 25 years and am now. What I have said as to the effect of the adjustment of rates from the East to Troy on the Alabama Midland on the same basis as rates to Montgomery, and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy and such other stations is based upon my knowledge

of the fact that the present rail rates practically exclude Troy from competing with more favored towns for traffic in her own territory and with the stations upon said railroad. I did not undertake to state in my direct examination that the aggregate revenue would be increased or diminished by such an adjustment of rates. I do not know whether or not the matter of fixing and adjusting rates on railroads or other transportation lines is a difficult, delicate, and complicated thing, requiring years of experience to master in that line. I do not think that I, having no experience in that line of business, am better capacitated to fix and adjust rates and to run railroads successfully than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to the stations east of Troy and to the other stations on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal with the Montgomery rates, I am unable to state what the effect would be upon my business and the business of Troy, and what effect it would have towards increasing or diminishing the tonnage of traffic hauled to Troy; nor can I state whether the aggregate volume of business at Troy would be increased or diminished, or to what extent.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahooche River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and the Mobile and Girard railroads, and between Eufaula and Columbus by the Savannah, Americus & Montgomery Ry., and at Eufaula by 454 the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola & Atlantic railroads. The distance from Opelika, Alabama, to Columbus, Georgia, by rail is about 20 miles. So far as I know, there is only two railroads that centre and cross at Opelika, Alabama. I do not know the population of Opelika.

455 *Answer of Oliver C. Wiley to the direct and cross interrogatories propounded to him in the above-entitled cause.*

OLIVER C. WILEY, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is Oliver C. Wiley; residence, Troy, Alabama; engaged in the business of the manufacture of cotton-seed oil and fertilizers. I have resided in Troy for forty-three years, and been engaged in my present business about eleven years.

2nd. Answering the second direct interrogatory. I do not know of any cotton shipped from Troy to New Orleans via Montgomery on account of the high local rate from here to Montgomery; if any were shipped it would be in carloads and compressed. It would be shipped without being transferred at Montgomery, except by the transfer of cars from one road to the other. Such shipments would be made on through bills of lading, and without any extra expense to the roads at Montgomery.

3rd. Answering the third direct interrogatory. When class goods are shipped through from Louisville, Cincinnati, and St. Louis, and other Ohio River points, via Montgomery to Troy, they are shipped under a through bill of lading to Troy, and for an aggregate through rate. There is no transfer of such freight at Montgomery from the cars in which it is

brought to that city to the cars of the Georgia Central or Alabama Midland railroads, unless the other car should be disabled. I am not aware of any extra expense to the roads at Montgomery on such shipments. I should say there is no difference between the terminal expenses of Troy on such through shipments to Troy and the terminal expenses of Montgomery on such through shipments to Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is from 3,500 to 4,000. There are about 83 stores—dry goods, groceries, and general merchandise. Troy has the following manufacturing and industrial enterprises: Oil mill, fertilizer factory, acid chamber, ice factory, cotton mill, compress, two livery stables and two sale stables, soda-water works, three printing offices, machine shop, electric-light plant, two railroads. The character of the territory around Troy is uplands, agricultural and timber. The population of this territory is from 35,000 to 40,000, mostly white people.

5th. Answering the fifth direct interrogatory. The city of Opelika, Alabama is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on my business and the business of Troy in towns and territory around Troy, and on the lines of the Alabama Midland and Georgia Central railroads, is in favor of Montgomery in selling goods in

Troy's territory to that extent that Troy is not able to compete with
456 Montgomery in her own territory. It has the further effect of diminishing our business. The towns of Gocean, Linwood, Brantley, and Seawright, on the Central Railroad, and Shady Grove, Ansley, Banks, Brundidge, and Tennille, on the Alabama Midland, constitute the territory naturally tributary to Troy, which entire trade Troy formerly controlled. We are unable to compete with Montgomery and Columbus merchants for the trade of the above-mentioned towns on account of the lower Ohio rates to Montgomery, Alabama, and Columbus, Georgia, above Troy.

7th. Answering the seventh direct interrogatory. I have never visited Apalachicola, Florida. I am not sufficiently informed to say what character of vessels can enter the harbor at Apalachicola; nor am I sufficiently informed to state whether vessels which sail from Apalachicola to Mobile and New Orleans or around Florida Keys to Atlantic ports can enter said harbor or not. Nor can I speak as to the mode of transferring goods from or to the river boats to or from Gulf steamers or vessels; nor as to the distance goods would have to be carried from or to river boats to or from Gulf vessels, or on what kind of vessels they have to be so carried. Upon information only I state that groceries are not carried by river from or to Columbus or Eufaula via Apalachicola from or to Mobile, New Orleans, or Atlantic ports. The route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, and St. Louis, and from New York and Northeastern cities to Columbus and Eufaula, is not a practicable route for through business. My information is that the harbor at Apalachicola is only used for the lumber business.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and the other stations on the Alabama Midland Railway east of Montgomery were fixed and adjusted on the same basis as those to

Montgomery, or made relatively equal to the Montgomery rates, it would have the effect of increasing to a considerable extent the tonnage of traffic hauled to Troy and such other stations, and the aggregate revenue of the road would be increased to a considerable extent, but I can not say definitely to what extent.

9th. Answering the ninth direct interrogatory. I know of no material difference effecting the transportation of traffic to and from Troy on the one hand and Eufaula, Columbus, and Opelika on the other. Eufaula and Columbus are both river towns, but no goods are shipped from the West via the Chattahoochee River. I know of no such difference which justifies the present excess of the Troy rates over those of such other cities.

10th. Answering the tenth direct interrogatory. I do not think that I know or can set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or that may be material to the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. My answer to the second direct interrogatory is from information and hearsay, and my answer to the third direct interrogatory is from my business experience. I have never had cotton shipped from Troy via Montgomery to New Orleans. I only know that when cotton is so shipped from Troy via Montgomery to New

457 Orleans, from information and hearsay, that it is carried in the same cars in which it is shipped from Troy. My knowledge as to whether or not any extra expense to the roads at Montgomery is incurred on such through shipments is derived from the fact that in such instances no such extra expense is charged on through bills of lading. I have only had during the last five years fertilizer material, such as blood, tankage, etc., shipped from Kansas City, St. Louis, and Chicago via Montgomery to Troy. Goods are shipped from Ohio River points to Troy via Montgomery under a through bill of lading and for an aggregate through rate, which is made up of the through rate to Montgomery with the local rate from Montgomery to Troy added. I answer this question on personal knowledge. From knowledge derived from the shipments above referred to, I can state that there was no transfer of such freight at Montgomery from the cars in which it was brought to that city to the cars on the roads of the Alabama Midland or Georgia Central companies, whenever such shipments are made in carload lots, or unless the car reached Montgomery disabled. I do not know of any expense incurred by the roads at Montgomery on such shipments by the Alabama Midland and Georgia Central companies between Montgomery and Troy, unless it be the expense of the switch engine at Montgomery. My answers to this interrogatory, as stated, are based on knowledge derived from experience in such shipments, and not from conjecture or hearsay. I can not say that I know of my own personal knowledge of the terminal expenses at Troy on such through shipments to Troy in comparison with the terminal expenses at Montgomery on such through shipments to Montgomery.

2nd. Answering the second cross. My best recollection is that the population of Troy, as shown by the last census, is about 3,500. There are about 83 mercantile houses in Troy. There is only one strictly wholesale merchant, but from five to ten merchants do a mixed wholesale and retail busi-

ness, and the rest are retail only. The bulk of the groceries are bought in the West, and some dry goods and clothing are bought in Cincinnati, and the bulk of the dry goods and light groceries are bought in the East. The volume of trade of Troy annually is \$3,400,000. My answer to the volume of trade of Troy per annum is based partly upon my personal knowledge, partly upon data collected by the Board of Trade of Troy, of which board I am a member. There were between 35,000 and 40,000 bales of cotton received in Troy during the year 1893. There the following manufacturing enterprises now in the city of Troy: Oil mill, fertilizer factory, acid chamber, ice factory, cotton mill. The number of hands employed by these manufacturing enterprises is about 250. The industrial enterprises of said town have an invested capital as follows: Troy fertilizer works with \$150,000 capital, employing about 100 hands; compress with \$50,000 capital, employing about 25 hands; water and electric-light works, with a capital of about 475,000, employing 25 hands; cotton mills with about \$40,000 capital, employing about 50 hands; ice factory with \$10,000 capital, employing about five to ten hands; 2 planing mills, capital invested about \$25,000, employing about 25 hands; furniture factory with \$5,000 invested, employing from five to ten hands; 6 cotton warehouses, capital invested about \$30,000, employing about 30 hands; machine shop with a capital invested of about \$10,000, employing about ten hands; 2 cotton ginneries with a capital invested of about \$10,000, employing about 20 hands, and 2 hotels, capital invested about \$25,000, number of hands employed unknown. I am unable to approximate the amount of capital invested in the mercantile business in the city of Troy.

Troy is 85 miles from Columbus, about 75 miles from Eufaula, 458 52 miles from Montgomery, 63 miles to Laverne, 26 miles to Brantley, 40 miles to Ozark, and 65 miles to Dothan. All the distances above given are estimated by rail. There are no manufacturing enterprises now in the city of Troy which were not here at the time the board of trade filed the petition before the Interstate Commerce Commission complaining of railroad rates. The only additional industrial enterprise now here which was not here then being the waterworks. I think the number of mercantile houses about the same now as then. Since 1890 the waterworks, electric lights, 1 planing mill, bottling works, and, I think, the furniture factory, have been established. I do not think there has been any material increase in the number of business houses since 1890. Considering new works established since 1890 and those that have ceased to do business there are probably a few more now than there were in 1890.

3rd. Answering the third cross. If a change of rates as prayed for by the Board of Trade of Troy to the Interstate Commerce Commission should result in a revision of the rates to Dothan, Ozark, Brantley, Seawright, and other intermediate stations, so as to make the rates to said intermediate stations correspondingly low, the effect on my business and the business of Troy and these stations and the territory around Troy and on the lines of the Alabama Midland and Georgia Central companies would be to allow us to reach these points in Troy's territory upon an equal footing with Montgomery and Columbus. As rates now stand they are in favor of Montgomery and Columbus. To a certain extent it would help these intermediate stations and the territory around by giving them a lower rate

of freight from the East and West. At many of these points the buyers are small, and they would still have to trade with Troy, Montgomery, and Columbus, and in this event Troy would stand an equal showing in selling them as Columbus or Montgomery. It is a fact that the Georgia Central Railroad, known as the Ozark Extension, and the Alabama Midland Railroad both enter Ozark, and to that extent it is a competitive point, but to what further extent, if any, it is a competitive point I am unable to state. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located about a mile from each other, but to what extent, if any, they are competitive points I do not know. They are both small stations and do very little business. Brantley, on the M. & G. Rd., is about 12 miles south of Luverne, the southern terminus of the Luverne branch of the Alabama Midland, and to that extent they are competitive points, so far as I know. If the rates to Troy were put upon the same basis with the Montgomery rates and at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Ariosto, and other points along the M. & G., the M. & E., and the Alabama Midland roads were also put upon the same basis, the effect would be to increase the business of Troy, Troy being a larger and a wealthier town than the other towns named, and would be in a condition to control the business around these other towns and in her own territory.

4th. Answering the fourth cross, I have had no experience in rate making on railroads or other transportation lines. I never was in charge of the rate making or operating department of a railroad or other transportation line, but was at one time president of the Alabama Midland Railway Company. I am able to state the effect of an adjustment of rates from the East to Troy on the Alabama Midland Railway on the same basis as rates to Montgomery on Troy and the surrounding territory, and that it would increase the tonnage of traffic hauled to Troy and such other stations from the fact that it would put Troy upon the same footing with Montgomery and Columbus and enable her to handle a great deal of business which is now handled by other points in consequence of her present high rates, which high rates do not apply to Montgomery or Columbus. I am able to state for the same reason that the aggregate revenue would be increased by such a readjustment of rates. The matter of fixing and adjusting rates on transportation lines is a delicate, difficult, and complicated thing, requiring constant study and experience to master in that business so far as it involves the matter of discrimination between points, but not so difficult when based on mileage. I do not think that I, having had no experience in that line, am better capacitated to fix and adjust rates and run railroads successfully than experienced men who have devoted a lifetime to that business. If the rates from the East to the stations east of Troy and to other intermediate points on the Alabama Midland and Georgia Central roads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal with the Montgomery rates, the effect on my business and the business of Troy would be to enable Troy to compete successfully with Montgomery and Columbus for the trade of this territory. The high rate to Troy against the present low rate to Montgomery and Columbus prevents Troy from selling goods in her own terri-

tory, and such a readjustment of rates would, in my opinion, result in greatly increasing the volume of business of Troy, but I can not speak more definitely as to the extent it would be increased.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus, via Eufaula, to Apalachicola. Such river is crossed at Columbus by the Savannah & Western Railroad and the Mobile & Girard, and between Columbus and Eufaula by the Savannah, Americus & Montgomery Ry., and at Eufaula by the Central, and at Alaga by the Alabama Midland, and at Chattahoochee by the Pensacola and Atlantic R. R. I think the distance from Opelika, Alabama, to Columbus, Georgia, is about 30 miles by rail; I can not speak more definitely. Two railroads concentre and cross at Opelika. The population of Opelika is about 4,000, according to the best of my knowledge and information.

460 *Answer of Joel D. Murphree to the direct and cross interrogatories propounded to him in the above-entitled cause.*

JOEL D. MURPHREE, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is Joel D. Murphree; I reside at Troy, Alabama; I am a capitalist; I have resided in Troy about 50 years, and have been engaged in my present business about 8 years.

2nd. Answering the second direct interrogatory. When cotton is shipped from Troy via Montgomery to New Orleans it is shipped in carload lots and is compressed; but there is very little cotton shipped from here to New Orleans. I can state only on information that it is carried on from Montgomery in the same cars in which it is shipped from Troy, and is not transferred to cars on the L. & N. road. There is no extra expense to the roads at Montgomery, so far as I know.

3rd. Answering the third direct interrogatory. Class goods are shipped through from St. Louis, Louisville, Cincinnati, and other Ohio River points via Montgomery to Troy under a through bill of lading and for an aggregate through rate. There is no transfer of such goods at Montgomery from the cars in which they come to that city to the cars of the Georgia Central and Alabama Midland companies, when said shipments are made in carload lots. I know of no goods shipped otherwise. There is no extra expense incurred by the roads at Montgomery on such shipments. The terminal expenses at Troy on such through shipments to Troy are no more, I should say, than the terminal expenses at Montgomery on through shipments from said cities to Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is between 4,000 and 4,500. There are 83 stores, 9 manufacturing and 17 industrial enterprises in Troy. In addition to these there are also two banks. The transportation facilities are the Alabama Midland Railroad and the Mobile & Girard Railroad. The character of the territory around Troy is agricultural and timber lands, mostly agricultural. There are numerous small towns and stations in this territory, and the population of this territory is between 30,000 and 40,000.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of the rates complained of to the Inter-state Commerce Commission by the Board of Trade of Troy on the business of Troy and the towns and territory around Troy, and on the lines of the Alabama Midland and Georgia Central (M. & G.) railroads is, that by reason of the discrimination in freights between this place and Montgomery, the business we formerly had is taken away from us. This discrimination between the freights to Montgomery and to Troy makes the price of goods so much higher at Troy that we can not compete with Montgomery and other cities on the same footing with Montgomery.

461 7th. Answering the seventh direct interrogatory. I have visited Apalachicola, Florida, once about five years ago. I was there only a part of a day. Of my own knowledge I do not know what character of vessels enter the harbor at Apalachicola. Speaking from information obtained while there, I state that only light-draft vessels can enter said harbor. Vessels which sail from Apalachicola to Mobile or New Orleans and around Florida Keys to Atlantic ports can not enter said harbor, except light schooners. Goods would have to be transferred to or from the river boat at Apalachicola to or from the ocean or Gulf steamer in lighters. I am not able to state how far such goods would have to be carried from or to the river boat to or from the ocean or Gulf vessel in the lighterage vessel. Speaking from information, I say that groceries are not shipped by river from or to Columbus or Eufaula via Apalachicola to or from Mobile, New Orleans, or Atlantic ports. I saw no evidence of such shipments, or of any other through business at Apalachicola from or to such cities or ports. The route by river from Columbus or Eufaula via Apalachicola to Louisville, Cincinnati, or St. Louis, or to New York and Northeastern cities, is not a practicable route for through business. The only business I saw was the lumber and oyster and sponge business. While at Apalachicola I saw nothing indicating the character and extent of shipments from or to Apalachicola on the Gulf or ocean, and the only vessel I saw was the steamboat on which I went there. I saw no Gulf or ocean steamers either inside or outside of the harbor.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railway east of Montgomery were fixed and adjusted on the same basis as those to Montgomery, or made relatively equal with the Montgomery rates, the effect would be to greatly increase the business of Troy and consequently the tonnage of traffic hauled to Troy and such other stations. I think the aggregate revenue of the road would be increased by such a readjustment of the rates.

9th. Answering the ninth direct interrogatory. I think there is no material difference between the circumstances and conditions effecting the transportation of traffic to and from Troy on the one hand, and Columbus, Eufaula, and Opelika on the other. There is no such difference, in my judgment, as justifies the present excess of the Troy rates over those of such other cities. There is no water competition at Opelika, and there is no water competition at Eufaula and Columbus, for the reason that the river runs in the opposite direction to the railroads, and they can not possibly compete with each other. There are no goods shipped up or down the river, except to local points.

10th. Answering the tenth direct interrogatory. I further state that Troy pays a higher rate of freight on cotton shipped to Savannah, Charleston, or Brunswick than is paid by Montgomery, notwithstanding Troy is 50 miles nearer those points. Troy pays a higher rate of freight on phosphate rock, shipped from the phosphate beds in Florida and South Carolina, than Montgomery does, although Troy is 50 miles nearer and this phosphate is hauled through Troy to Montgomery.

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Cross-interrogatories :

1st. Answering the first cross. My answer to the first and second direct interrogatories is based on information acquired by me as part of my duty as president of the Board of Trade of Troy, and from personal investigation as to the subjects covered by said interrogatories. I have never shipped cotton from Troy to New Orleans via Montgomery. I have already stated in the first part of my answer to this interrogatory upon what my testimony was based as to the extra expense to the roads at Montgomery on such shipments. I do not ship or handle goods of any character, and therefore what I have said as to the shipments of such goods under a through bill of lading, and at an aggregate through rate, is based upon information derived from investigation through my connection with the Board of Trade of Troy as above stated. I am not able to state of my own personal knowledge whether there is a transfer of such goods at Montgomery from the cars in which they are brought to that city to the cars on the roads of the Georgia Central and Alabama Midland companies, or what expense is incurred at Montgomery by these roads, but what I have stated upon this subject is stated upon information derived in the manner above stated. I do not know of my own personal knowledge how the terminal expenses at Montgomery on such through shipments from said cities to Montgomery compare with the terminal expenses at Troy on such through shipments to Troy, and what I have stated on that subject is based upon information acquired through the investigation made by me as hereinabove stated.

2nd. Answering the second cross-interrogatory. I do not know what the population of Troy is as shown by the last census. There are 83 mercantile houses in the city of Troy, but only one strictly wholesale house; the others are either retail strictly, or wholesale and retail combined. Nearly all the merchants in Troy do a mixed business, dealing in dry goods and groceries, and consequently nearly all of them buy goods both from the East and from the West. The volume of trade of Troy (and by this I mean all business and Troy done in Troy) would approximate \$3,000,000 annually. My answer to this last question is based on knowledge, business observation, and information obtained from the business men of Troy, and through the facilities furnished through my connection with the Troy Board of Trade. There were between 32 and 26 thousand bales of cotton received in Troy during the year 1893. There are the following manufacturing industries now in Troy: Fertilizer factory, with an oil mill, invested capital of \$150,000, the number of hands employed I do not know; soda-water works—I do not know the amount of capital invested nor the number of hands employed; knitting or cotton mill, with a capital invested of about \$40,000, temporarily suspended, with no hands employed now; furniture factory, I do not know the amount of capital invested or the number of hands employed; 2 saw and planing mills, I do

not know the amount of capital or the number of hands. The industrial enterprises are as follows: Compress, with a capital invested of \$50,000, employing about a dozen hands; 3 printing offices, with a capital of about \$8,000 for the three, and they employ about 12 hands in all; 6 cotton warehouses, with a capital of about \$20,000 for all, employing about 36 hands in all; 2 hotels, with a capital invested of about \$20,000—invested in the two—and employing about 20 hands in the two; the electric light plant, with a capital of about \$40,000, employing about 6 hands; 463 waterworks, with a capital of about \$20,000, employing about 6 hands. There are some minor establishments in Troy, consisting of shoe shops, barber shops, etc. I am not able to state how much capital is invested in the mercantile, manufacturing, and industrial enterprises in Troy. Troy is 85 miles from Columbus, 70 miles from Eufaula, 50 miles from Montgomery by one route and 70 miles by the other, 50 miles from Luverne, 28 miles to Brantley, 35 miles to Ozark, and 60 miles to Dothan. All the above distances are estimated by railroad route. The only change in respect to the mercantile, manufacturing, and industrial enterprises in Troy from the time the Board of Trade of Troy filed a petition complaining of the rates before the Interstate Commerce Commission up to this time is that the waterworks have been established and two warehouses opened since that time. There are more mercantile and industrial enterprises now in the city than there were in the year 1890, but I am not prepared to state now how many. I know this to be a fact, because there are more stores built since 1890, all of which are now occupied.

3rd. Answering the third cross. If the change of rates as prayed for by the Board of Trade of Troy to the Interstate Commerce Commission should result in a revision of the rates to Dothan, Ozark, Brantley, Seawright, and other intermediate stations, so as to make the rates to these stations correspondingly low, the effect on the business of Troy and of these stations would be to increase the business of Troy, for the reason that we could pay higher prices for cotton and thereby compete with Montgomery, our principal competitor, and we could sell heavy groceries for less than we now sell them; and such a readjustment would also result beneficially to the above-named towns and other intermediate stations, and the territory around Troy and on the lines of the Alabama Midland and Georgia Central companies. It is a fact that the Georgia Central Railroad, known as the Ozark Extension, and the Alabama Midland Railway make Ozark a competitive point. It is a fact that Ariosto on the Alabama Midland and Charlton on the Ozark Extension are located within a half or three-quarters of a mile of each other, but I do not think they could be considered competitive points; they are small towns, merely railroad stations, and do very little business, and cotton comes from their very doors to Troy. It is a fact that Brantley on the Mobile and Girard is 11 miles south of Luverne, the southern terminus of the Luverne branch of the Alabama Midland Railway, and these points are competitive points to the extent of the intermediate territory. The effect upon the business of Troy, if the rates to Troy were put on the same basis with the Montgomery rates, and at the same time the rates to Union Springs, Brantley, Luverne, Charlton, and Ariosto, and other points on the M. & G., M. & E. and Alabama Midland railroads, were also put upon the same basis, would be to greatly benefit the business of Troy. The other stations named can not be regarded as competitors with Troy.

4th. Answering the fourth cross. I have never had any experience in rate-making on railroads or other transportation lines, and have never operated a railroad or other transportation line. I have been a director of the M. & G. road and am still, but have never been employed or engaged in the operating or rate-making department of a railroad. I am able to state the effect of an adjustment of rates from the East to Troy on the Alabama Midland on the same basis as rates to Montgomery, and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy or such other stations, from my observation
464 and from investigation into said subjects made by me in the line of my duties as a member of the Board of Trade of Troy, and from my own knowledge of the effect of the present rates upon the business of Troy, and, in the same manner, I am able to state that the aggregate revenue of the road would be increased by such a readjustment of the rates. I do not think the matter of fixing and adjusting rates on railroads and other transportation lines would be a difficult, delicate, and complicated matter requiring years of constant study and experience to master if such rates were fixed and adjusted upon a mileage basis. I do not think that I, having no experience in that line of business, am better capacitated to fix and adjust rates, and run railroads successfully, than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to the stations east of Troy, and to other stations on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery were fixed and adjusted as those to Troy, and made relatively equal with the Montgomery rates, it would benefit the business of Troy and would increase the tonnage of traffic hauled to Troy. The aggregate volume of business at Troy would be increased by such a readjustment of rates, but to what extent I am not able to state.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Columbus and Eufaula are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. It is a fact that this river is crossed at Columbus by Savannah & Western and the Mobile & Girard railroads, and between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway, and at Eufaula by the Central Railroad, and at Alaga by the Alabama Midland Railway, and at Chattahoochee by the Pensacola and Atlantic Railway. I am not sure, but I think the distance from Opelika, Alabama, to Columbus, Georgia, is about 40 miles. There are two railroads that concenter and cross at Opelika, Alabama, and these are all, so far as I know. I am not able to state positively, but I think the population of Opelika is between 3,000 and 4,000.

465 *Answers of J. E. Henderson to direct and cross interrogatories propounded to him in the above-entitled cause.*

J. E. HENDERSON, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is J. E. Henderson; I reside at Troy, Alabama; am a dealer in dry goods and shoes. I have resided at Troy all of my life and have been engaged in said business since February 15th, 1894.

2nd. Answering the second direct interrogatory. When cotton is shipped from Troy via Montgomery to New Orleans it is shipped in carloads and compressed. Cotton so shipped is carried on from Montgomery in the same cars in which it is shipped at Troy, and is not transferred at Montgomery to cars on the L. & N. Railroad. I think there is no extra expense to the roads at Montgomery.

3rd. Answering the third direct interrogatory. When class goods are shipped through from Louisville, Cincinnati, and St. Louis and other Ohio River points via Montgomery to Troy they are shipped on a through bill of lading and for an aggregate through rate; and this rate is made up of the through rate to Montgomery with the local rate from Montgomery to Troy added. When goods are so shipped, if in carload lots, they go through Montgomery to Troy in the same cars in which they are shipped at the initial point. There is no extra expense on such shipments in carload lots to the roads at Montgomery, unless the roads there have to pay for trackage. The terminal expenses at Troy on such through shipments to Troy would be less than the terminal expenses at Montgomery on such through shipments from said cities to Montgomery.

4th. Answering the fourth direct interrogatory. The population of Troy is between 4,000 and 5,000. Troy has between 75 and 100 stores—dry goods, groceries, and general merchandise—and eight or ten manufacturing enterprises, and ten or twelve industrial enterprises, a more specific and detail description of which is given in my answer to the 2nd cross-interrogatory. Troy has two railroads—the Alabama Midland, running from Montgomery to Bainbridge, and the Mobile & Girard Railroad, a part of the Georgia Central system. The territory, naturally tributary to Troy, consists of uplands and farming lands, and comprises a good many small towns, and has a population of from 30,000 to 40,000.

5th. Answering the fifth direct interrogatory. The city of Opelika is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. The effect of rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy on my business and the business of Troy, and in towns and territory around Troy and on the lines of the Alabama Midland and Georgia Central (M. & G.) railroads, is difficult to be determined as to my business, as I do no jobbing business; the effect upon Troy and the territory around Troy is that it prevents Troy from competing with Montgomery and Columbus for the trade of the towns of Tennille, 466 Brundidge, Ansley, and Grady, on the Alabama Midland, and Goshen, Brantley, and Seawright, on the Georgia Central railroads.

7th. Answering the seventh direct interrogatory. I have never visited Apalachicola, Florida. I am not sufficiently informed to answer the remaining questions embraced in said interrogatory.

8th. Answering the eighth direct interrogatory. If the rates from the East to Troy and other stations on the Alabama Midland Railroad east of Montgomery were fixed and adjusted on the same basis as those to Montgomery, or made relatively equal to the Montgomery rates, the effect would be to increase the tonnage of traffic hauled to Troy and such other stations, and would benefit Troy. I can not state whether or not the aggregate revenue of the road would be increased or diminished by such a readjustment of the rates.

9th. Answering the ninth direct interrogatory. I know of no material difference effecting the transportation of traffic to and from Columbus, Eufaula, and Opelika on the one hand and Troy on the other. I know of no such difference as justifies the present excess of the Troy rates over those of such other cities.

10th. Answering the tenth direct interrogatory. I do not know and can not set forth any other matter or thing that may be a benefit or advantage to the parties to this cause, or that may be material to the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. My answer to the second direct interrogatory is based upon my knowledge of the customary mode of shipping cotton, and also from information derived from others engaged in making such shipments. My answer to the third direct interrogatory is based both upon my experience in my own business in the shipment of goods from said points through Montgomery to Ozark (where I am engaged in a general merchandise business). Why I know such shipments are received in through cars without transfer at Montgomery is also based on information derived from the merchants of Troy who are accustomed to make such shipments to Troy. I have never had cotton shipped from Troy via Montgomery to New Orleans. I can not state of my own personal knowledge whether or not any extra expense is incurred by the roads at Montgomery in shipping cotton from Troy via Montgomery to New Orleans, or Mobile, and whether or not it is carried on in the same cars in which it is shipped at Troy. I have had class goods shipped from Louisville, Cincinnati, and St. Louis and other Ohio River points via Montgomery to Troy, but in less than carload lots. I can state from my own personal knowledge that the goods are shipped from said points via Montgomery to Troy under a through bill of lading at an aggregate through rate, but this rate (I can only state on information) was made up of the through rate to Montgomery with the local from Montgomery to Troy added. In my business I have often bought groceries at Troy, and in figuring upon the price the rate of freight was taken into consideration, and in this way I became acquainted with the manner in which this through rate is made up from said points via Montgomery to Troy, and also by negotiations with Montgomery merchants for the purchase of flour. In such negotiations with Troy and Montgomery merchants I found that I could buy flour shipped from Montgomery at about the same rates as I could ship it to Troy from the mills, which leads me to believe that the through rate is made up of the local rate from Montgomery to Troy added to the through rate to Montgomery. I will add that the manner of making up this through rate is a matter of common knowledge in the town of Troy. I can state of my own knowledge that there is no transfer of such goods at Montgomery from the cars in which they are brought to that city to the cars on the roads of the Alabama Midland and Georgia Central companies, but I can not state of my own knowledge whether any expense is incurred by the roads at Montgomery on such shipments by the Alabama Midland and Georgia Central railroads between Montgomery and Troy. From business observation I state that the terminal expenses at Troy on said through shipments to Troy are less than the terminal expenses at Montgomery on through shipments from said cities to Mont-

gomery. This answer is based not upon hearsay or conjecture, but, as I have stated, upon business observation and from my knowledge of the terminal facilities at the two places.

2nd. Answering the second cross. I do not remember the population of Troy as shown by the last census. There are between 75 and 100 mercantile houses in the city of Troy. There is only one strictly wholesale merchant, the others are wholesale and retail combined. A great many more of these merchants buy from the West than from the East, but what proportion I can not more definitely state. The volume of trade done by the mercantile houses of Troy annually is about one and a half millions. In this estimate I do not include the business done by the manufacturing enterprises. My answer as to this volume of trade is based upon my knowledge and from business observation and hearsay. I am not able to state how many bales of cotton were received in Troy during the year 1893. There are the following manufacturing enterprises in Troy: The Troy fertilizer works, with a paid-up capital of \$150,000—this includes the fertilizer factory, acid chamber, and oil mill; cotton mill, manufacturing cotton goods, the amount of capital invested unknown to me; 2 planing mills, the amount of capital invested unknown; 2 ginneries, the amount of capital unknown; machine shop, amount of capital unknown; ice factory, capital unknown. Troy has the following industrial enterprises: Compress, with a capital of \$50,000; electric-light plant, capital unknown; waterworks, capital unknown; 6 warehouses, capital unknown. I do not know the number of hands employed in any of these manufacturing or industrial enterprises. These are all I now recall. I am unable to state the amount of capital invested in the manufacturing, industrial, and mercantile and other enterprises in said city of Troy. Troy is 85 miles from Columbus, about 75 miles to Eufaula by Union Springs and 100 miles by Ozark, about 51 miles to Montgomery. I do not know the distance from Luverne. Troy is about 25 or 30 miles from Brantley, on the M. & G., 41 miles to Ozark and 67 miles to Dothan. All the above distances are estimated by rail. I know of no more manufacturing, industrial, or mercantile enterprises now in Troy than there were at the time the Board of Trade of Troy filed their petition complaining of the rates. There is very little difference between the number of manufacturing, industrial, and mercantile enterprises now in Troy than there were in 1890. I can not specify the difference more definitely.

468 3rd. Answering the third cross-interrogatory. If a change of rates as prayed for by the Board of Trade of Troy should result in a revision of the rates to Dothan, Ozark, Brantley, and Seawright, and other intermediate stations, so as to make the rates to said stations correspondingly low, I do not think it would have any effect on my individual business, but it would benefit the business of the town of Troy; it would also benefit the towns and the territory around Troy and on the lines of the Georgia Central and Alabama Midland railroads. I do not know whether or not the Georgia Central and Alabama Midland railroads make Ozark a competitive point. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Ozark Extension, are located within a half or three-quarters of a mile of each other, and that practically said places are competitive points. I do not know the distance from Brantley, on the M. & G. road, to Luverne, the southern terminus of the Luverne branch of the

Alabama Midland road, and can not state whether or not these two points are practically competitive points. If the rates to Troy were put upon the same basis with Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Charlton, Ariosto, and other points along the line of the M. & G., M. & E., and Alabama Midland railroads were put upon the same basis, I do not think it would have any material effect.

4th. Answering the fourth cross-interrogatory. I have never had any experience in rate making on railroads or other transportation lines. I have never operated a railroad or other transportation line, and have never been employed or engaged in that line of business. The statements I have made as to the effect of an adjustment of the rates from the East to Troy, on the Alabama Midland Railway, on the same basis with rates to Montgomery, and whether it would have the effect to increase or diminish the tonnage of traffic hauled to Troy, is based upon my knowledge of the territory and upon my business observation and experience. I did not undertake to state in my answer to the direct interrogatories whether the revenue of the road would be increased or diminished by such a readjustment of rates. I think the matter of fixing and adjusting rates on railroads or other transportation lines a delicate, difficult, and complicated matter, requiring years of constant study and experience to master in that line of business. I do not think that I, having no experience in that line of business, am better capacitated to fix and adjust rates and to run railroads successfully than experienced and skilled men who have devoted a lifetime to such business. If the rates from the East to the stations east of Troy and to other stations on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy, and made relatively equal to the Montgomery rates, I think the effect would be to benefit the business at Troy to some extent and to increase the tonnage of traffic hauled to Troy, and that the aggregate volume of business at Troy would be increased, but to what extent I am not able to state.

469 5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Columbus and Eufaula are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and Mobile and Girard roads. I think it is crossed between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway, but I am not positive. It is crossed at Eufaula by the Central and at Alaga by the Alabama Midland railroads. I can not state of my own knowledge as to whether it is crossed at Chattahoochee by the Pensacola and Atlantic Railroad. I do not know the distance from Opelika to Columbus, Georgia. I do not know how many railroads concentre and cross at Opelika, Alabama, nor do I know the population of Opelika.

470 *Answer of H. B. Cowart to the original and cross interrogatories propounded to him in the above-entitled cause.*

H. B. COWART, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is H. B. Cowart; place of residence, Troy, Alabama; I am chief of police. I have resided here and have been chief of police two years.

2nd. Answering the second direct interrogatories. I do not know, when cotton is shipped from Troy to New Orleans via Montgomery, whether it is shipped in carloads or less than carloads, compressed or uncompressed. I do not know whether it is carried on from Montgomery in the same cars in which it is shipped from Troy, or whether it is transferred at Montgomery on cars on the L. & N. road. I do not know whether there is any extra expense to the roads at Montgomery, or what.

3rd. Answering the third direct interrogatories. When class goods are shipped through from Louisville, Cincinnati, and St. Louis, or other Ohio River points, via Montgomery to Troy, I do not know whether they are shipped under a through bill of lading or for an aggregate through rate. Nor do I know whether there is a transfer of such goods at Montgomery from the cars in which they are brought to that city to the cars on the roads of the Georgia Central or Alabama Midland companies; nor do I know what extra expense, if any, is incurred by the roads at Montgomery on such shipments. Nor do I know how the terminal expenses at Troy compare with those at Montgomery on shipments from the points named to each of said places respectively.

4th. Answering the fourth direct interrogatory. The population of Troy is between four and five thousand. I do not know the number of mercantile houses in Troy, but I think there are about 80. Troy has an oil mill and fertilizer works, and a knitting mill (now suspended), soda water works, machine shop, furniture factory, two planing and saw mills. These are all that I now recall of the manufacturing enterprises. The industrial enterprises are waterworks, electric light works, six cotton warehouses, two hotels, and a compress. There are two telegraph lines, but these are not local. Troy's transportation facilities are the Georgia Central and Alabama Midland railroads. The Alabama Midland Company connects with the Plant system, and the system has a through line from here to Savannah, and to New York by boat. The character of the territory around Troy is agricultural and timber lands, with a population of 25,000 or 40,000.

5th. Answering the fifth direct interrogatory. The city of Opelika, Alabama, is not on any navigable stream or body of water.

6th. Answering the sixth direct interrogatory. I am not able to state what effect the rates complained of to the Interstate Commerce Commission by the Board of Trade of Troy has on the business of Troy, in towns and territory around Troy, and on the lines of the Georgia Central and Alabama Midland roads.

471 7th. Answering the seventh direct interrogatory. I have visited Apalachicola, Florida; I was there two or three days in April, 1894. Only schoongers or small vessels can enter the harbor at Apalachicola; I do not think that vessels which sail from Apalachicola to Mobile or New Orleans or around Florida Keys to Atlantic ports can enter said harbor, but I do not know positively as to this. Goods would have to be transferred by lighterage or towboats to or from the river boats from or to the ocean or Gulf vessels. I can not state positively how far such goods would have to be carried, but it is at least nine miles, and they would have to be carried on small vessels or lighterage. I am not able to state whether groceries are shipped from or to Columbus or Eufaula, via Apalachicola, from or to Mobile or New Orleans or Atlantic ports. I did not see any

evidence of such shipments or of any through business at Apalachicola from or to such cities or ports. I do not think the route by river from Columbus and Eufaula via Apalachicola to Louisville, Cincinnati, St. Louis, and New York and Northeastern cities is a practicable route for through business. The harbor at Apalachicola is used mainly, if not exclusively, for the lumber business. I made no special observation while at Apalachicola as to the character or extent of shipments from or to Apalachicola on the Gulf or ocean, or as to the class of vessels serving that port. I saw one sail vessel outside of the harbor from Boston, which had come there for cypress lumber. I saw no Gulf or ocean steamers either inside or outside the harbor.

8th. Answering the eighth direct interrogatory. If the rail rates from the East to Troy and other stations on the Alabama Midland Ry. east of Montgomery were fixed and adjusted on the same basis as rates to Montgomery, or made relatively equal to the Montgomery rates, I do not know what effect it would have in increasing or diminishing the tonnage of traffic hauled to Troy or such other stations, or whether the aggregate revenue of the road would be increased or diminished.

9th. Answering the ninth direct interrogatory. I am not able to state whether or not there is any material difference between the circumstances and conditions effecting the transportation of traffic to and from Columbus, Eufaula, and Opelika on the one hand and Troy on the other, or whether or not there is such a difference as justifies the present excess of the Troy rates over those to such other cities.

10th. Answering the tenth direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties to this cause, or that may be material to the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. The witness makes no answer to the first cross-interrogatory for the reason that the same is predicated upon the second and third direct interrogatories, as to which two direct interrogatories the witness stated that he had no knowledge.

2nd. Answering the second cross. My recollection is that the population of Troy as shown by the last census is between 3,500 and 4,000. The number of mercantile houses in Troy is about 83. There is only one strictly wholesale house; the others are wholesale and retail combined or retail strictly. Nearly all of our merchants are engaged in a general merchandise business, and buy their goods both from the East and from the West; I can not state more definitely. I am unable to state the volume of trade of Troy in any given year. About 40,000 bales of cotton were received in Troy during the year 1893. The following manufacturing and industrial enterprises are in Troy, but the amount of capital invested or the number of hands employed I am unable to state, viz: Oil mill, fertilizer works, knitting mill (now suspended), soda-water works, machine shop, furniture factory, two planing and saw mills, waterworks, electric light-works, six cotton warehouses, two hotels, compress. I am not able to state the amount of capital invested in the manufacturing, industrial, and mercantile enterprises in the city of Troy. The distance from Troy to Columbus is 84 miles, to Eufaula 75 miles, to Montgomery 52 miles, I do not know the distance to Laverne, to Brant-

ley 30 odd miles, to Ozark 40 miles, to Dothan 80 odd miles. There are no more manufacturing, mercantile, or industrial enterprises in the city of Troy now than were here when the Board of Trade of Troy filed their petition complaining of the rates, and I think not quite so many. The knitting mills which were then in operation are now suspended and the shoe factory then in operation is now closed. I can not specify more particularly at this time. I am unable to state whether there are more or less mercantile, manufacturing, and industrial enterprises here now than were here in 1890. I was not here in 1890.

3rd. Answering the third cross. Witness does not answer so much of the third cross-interrogatory as relates to the change of rates and the effect thereof, as set forth in said interrogatory, for the reason that he did not undertake to answer the direct interrogatories upon that subject, but stated that he had no knowledge or information in respect thereto. I think it is a fact that the Georgia Central Railroad, known as the Ozark Extension, and the Alabama Midland Railway make Ozark a competitive point. It is a fact that Ariosto, on the Alabama Midland, and Charlton, on the Central, are located within a half or three-quarters of a mile of each other, and that practically said points are competitive points. Brantley, on the M. & G., is more than 6 miles south of Luverne, the southern terminus of the Luverne branch of the Alabama Midland road (I think from 9 to 11 miles), and practically Luverne and Brantley are competitive points. I am unable to state what the effect would be upon the business of Troy if the rates to Troy were put upon the same basis with the rates to Montgomery, and if at the same time the rates to the other points along the M. & G., M. & E., and Alabama Midland railroads were put upon the same business. The fact that I am not and have not been for a good many years engaged in the mercantile business in Troy is the reason why I have not had occasion to look into and investigate this question of rates.

4th. Answering the fourth cross. I have never had any experience in rate making on railroads or other transportation lines. I have never operated a railroad or other transportation line, or been engaged or employed in that business. I have not undertaken in my answers to the direct interrogatories to state the effect of a' adjustment of rates from the East to Troy upon a basis with Montgomery rates, or whether it would increase or diminish the tonnage of traffic to Troy or other stations along the line of the Alabama Midland Railway, nor how it would effect the aggregate revenue.

473 I think the matter of fixing and adjusting rates on railroads or other transportation lines a delicate, difficult, and complicated matter, requiring years of experience to master in that line, and I do not think that I, having no experience in that line, am better capacitated to fix and adjust rates and run railroads successfully than experienced and skilled men who have devoted a lifetime to that business. If the rates from the East to stations east of Troy and to other intermediate points on the Alabama Midland and Georgia Central railroads south of Columbus and east of Montgomery were fixed and adjusted on the same basis as those to Troy and made relatively equal to the Montgomery rates, I am unable to state what effect it would have on the business of Troy, or whether it would increase or diminish the tonnage of traffic hauled to Troy, or whether the aggregate volume of the business of Troy would be increased or diminished.

5th. Answering the fifth cross. There is no water transportation to Troy. It is a fact that Eufaula and Columbus are situated on the Chattahoochee River, a stream navigable from Columbus via Eufaula to Apalachicola. Said river is crossed at Columbus by the Savannah & Western and the Mobile and Girard railroads, and between Columbus and Eufaula by the Savannah, Americus & Montgomery Railway, and at Eufaula by the Central Railroad, and at Alaga by the Alabama Midland Railway, and at Chattahoochee by the Pensacola & Atlantic Railway. I do not know the distance from Opelika to Columbus, Georgia. I do not know how many railroads centre and cross at Opelika. I do not know the population of Opelika.

474 *Answers of W. J. Haylow to the direct and cross interrogatories propounded to him in the above-stated cause.*

W. J. HAYLOW, being duly sworn, deposes and says :

1st. Answering the 1st direct interrogatory. My name is W. J. Haylow ; age, 36 years ; residence, Montgomery, Alabama ; occupation, master of transportation of the Alabama Midland Railway Company.

2nd. Answering the 2nd direct interrogatory. My connection with the Alabama Midland Railway Company is, as stated above, master of transportation. I have held this position since the 15th day of September, 1889.

3rd. Answering the 3rd direct interrogatory. I did cause an accurate account to be kept of the cost per ton per mile for transporting local freight on local freight train No. 14 on said railroad.

4th. Answering the 4th direct interrogatory. Said local freight train No. 14, of which I kept the account of the cost per ton per mile of transportation, was the east-bound train between Montgomery and Pinckard, a distance of 106 miles, and during the days of May 21st, 23rd, 25th, 28th, and 30th this account was kept.

5th. Answering the 5th direct interrogatory. The cost per ton per mile of transporting local freight on this train, No. 14, is 4.84 cents.

6th. Answering the 6th direct interrogatory. The percentage of the paying weight of the local freight to the total weight of said local freight, and of the cars in which it was transported in said train No. 14 is 14 %.

7th. Answering the 7th direct interrogatory. I did cause an accurate account to be kept of the cost per ton per mile of transporting local freight on local freight train No. 13 on said railroad.

8th. Answering the 8th direct interrogatory. This train No. 13, above referred to, was the west-bound train from Pinckard to Montgomery, a distance of 106 miles, and during the days of May 22nd, 24th, 26th, 29th, and 31st, 1894, this account was kept.

9th. Answering the 9th direct interrogatory. The cost per ton per mile of transporting freight on train No. 13 is 7.57 cents.

10th. Answering the 10th direct interrogatory. The percentage of the paying weight of the local freight to the total weight of said local freight and the cars in which it was transported in local freight train No. 13 is 11 %.

11th. Answering the 11th direct interrogatory. The average of the cost per ton per mile of transporting local freight on both of said trains, Nos. 14 and 13, is 6.15 %.

475 12th. Answering the 12th direct interrogatory. The average percentage of the paying weight of the local freight to the total weight of said local freight and of the cars in which it was transported in trains Nos. 13 & 14, is 12%.

13th. Answering the 13th direct interrogatory. I did cause to be kept an accurate account of the the cost per ton per mile of transporting carload freight on through freight train No. 34 on said Alabama Midland Railway.

14th. Answering the 14th direct interrogatory. Said train No. 34 was east bound between Montgomery and Thomasville, a distance of 211 miles, and the said account was kept during the days of May 21st, 22nd, 23rd, 24th, & 25th, 1894.

15th. Answering the 15th direct interrogatory. The cost per ton per mile of transporting freight on said train No. 34, above referred to, is 1.06 cents.

16th. Answering the 16th direct interrogatory. The percentage of the paying weight of such carload freight to the total weight of such freight and the cars in which it was transported on said train No. 34 is 37%.

17th. Answering the 17th direct interrogatory. I did cause an accurate account to be kept of the cost per ton per mile of the cost of transporting freight (carload) on through freight train No. 33 on said railroad.

18th. Answering the 18th direct interrogatory. Said through freight train No. 33 was the west-bound train between Thomasville and Montgomery, a distance of 211 miles, and said account was kept during the days of May 21st, 22nd, 23rd, 24th, 25th, 1894.

19th. Answering the 19th direct interrogatory. The cost per ton per mile of transporting freight on said train No. 33 is 87 cents.

20th. Answering the 20th direct interrogatory. The percentage of the paying weight of the carload freight to the total weight of said carload freight and of the cars in which it was transported in said train No. 33, is 47%.

21st. Answering the 21st direct interrogatory. The average of the cost per ton per mile of transporting freight (carload) on both of said trains, No. 33 and 34, is .96 cts.

22nd. Answering the 22nd direct interrogatory. The average percentage of the paying weight of the carload freight to the total weight of said carload freight and of the cars in which it is transported in trains Nos. 33 & 34 is 42%.

23rd. Answering the 23rd direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this my examination or the matters in question in this cause.

476 Cross-interrogatories :

1st. Answering the 1st cross. I did not in my answers to the direct interrogatories give the rates in effect March 1st, 1894, from Louisville, Cincinnati, and St. Louis, respectively, to Troy on the classes specified in this cross-interrogatory, and for this reason can not further answer this cross-interrogatory.

2nd. Answering the 2nd cross. No direct interrogatory have been propounded to me upon the subject-matter embraced in this 2nd cross-interrogatory, I do not further answer said second cross-interrogatory.

3rd. Answering the 3rd cross. The distance via the L. & N. R. R. from Louisville to Montgomery is 490 miles. The distance from Cincinnati to Montgomery via the L. & N. R. R. is 600 miles. The exact distance from St. Louis to Montgomery via the L. & N. R. R. I do not know. The distance from Montgomery, over the Alabama Midland Railway, to Troy is 52 miles, and over the Georgia Central Railroad it is about 71 miles, according to my recollection. I am not able to state what rate per ton per mile is yielded by the proportion of the through rate from Louisville, Cincinnati, and St. Louis through Montgomery to Troy, is charged for the haul to Troy, nor am I able to state what rate per ton per mile is yielded by the through rate from those cities respectively to Montgomery.

4th. Answering the 4th cross. On shipments from Louisville, Cincinnati, and St. Louis via Montgomery to Troy, some of the cars in which the goods are shipped go through to Troy, and sometimes goods are transferred at Montgomery to cars on the roads of the Alabama Midland and Georgia Central companies. The goods are not transferred from car to car at Montgomery unless the through car is rejected on inspection on account of bodily defects. The extra expense on such shipments at Montgomery when the cars are carried through is the extra force necessary to be kept for switching, rebilling, and inspecting, and the extra expense when the goods are transferred from car to car is the labor of handling. I am not able to state what such expense amounts to per car or per 100 lbs. of the traffic. On through shipments from said cities to Montgomery and Troy, respectively, there is a difference in the terminal expenses at Troy and those at Montgomery, those at Montgomery being greater, on account of the larger force to be maintained for handling the freight, billing, switching, and inspecting, all of which does not have to be done at Troy.

5th. Answering the 5th cross. No direct interrogatory was propounded to me calling for my opinion as to whether the proportion of the through rates received by the Alabama Midland and Georgia Central roads for transportation between Montgomery and Troy is reasonable or not, and for that reason I did not consider them either as local or through rates, and gave no answer on that subject. The cost of handling local freight is much greater than handling through freight per ton per mile. I am not able to state whether the proportion of the through rate received by the Alabama Midland and Georgia Central railroads for the service of transportation from Montgomery to Troy is substantially the local
477 rate from Montgomery to Troy. I am not able to state whether, in making rates from Montgomery to Troy, Montgomery is considered as what is known as a basing point, distributing point, or trade centre.

6th. Answering the 6th cross-interrogatory. I am unable to state whether the railroad commissions of Georgia or Alabama undertake to prescribe or regulate the through rates on interstate traffic or the proportions of such through rates charged for that portion of said through hauls of such

through traffic which may be in these States. The duties of my position are outside of the traffic department.

7th. To Mr. McLendon only.

8th. To Mr. McLendon only.

9th. Answering the 9th cross. The revenue of railroads generally throughout the country have fallen off materially, according to my information and observation, during the last two or three years, on account of the depressed business and financial condition of the country. I am not able to state whether the revenues of the Alabama Midland Railway, for the fiscal year 1892-93, were reduced by cut rates or rate wars. The fiscal year 1892-93 was an exceptionally bad year.

10th. To Mr. Dunham only.

11th. Answering the 11th cross. When cotton is shipped from Troy via Montgomery to New Orleans, whether or not it is transferred at Montgomery from the cars in which it was shipped at Troy to cars on the lines of the L. & N. R. R. depends on whether it is shipped in carload lots or less than carload lots. It is transferred from car to car when in less than carload lots, and when the cars are rejected on inspection also. The extra expense incurred by the roads at Montgomery on such shipments arises from the large force required to be kept on hand, and the expenses of shipping and rebilling, but I am not able to state what such expense amounts to per 100 lbs. or per bale.

478 *Answers of B. Dunham to the direct and cross interrogatories propounded to him in the above-entitled cause.*

BRADFORD DUNHAM, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is Bradford Dunham; age, 56 years; residence, Montgomery; occupation, superintendent of the Alabama Midland Railway Company.

2nd. Answering the 2nd direct interrogatory. I have been engaged in the railroad business in the United States in different capacities for about 36 years, viz, forwarding clerk of the Central of Georgia; conductor on the Atlantic & Gulf and Brunswick & Albany Railroad and Savannah & Charleston Railroad; freight agent of the A. & F. R. R.; afterwards master of transportation and asst. supt.; supt. of the M. & E. Ry.; supt. of several divisions of the L. & N. R. R. and the Western Railway from Montgomery to Selma; I was general manager of what is known as the Trans-Ohio Division of the B. & O. R. R.; general manager of the L. & N. system; general manager of the B. & O. system; I was president of several roads in the Northwest during the time I was general manager of the B. & O. system. I was vice-president and gen. supt. of the N. W. Fla. Rd., and was also receiver of this road in both cases, one in the chancery court of this county and afterwards in the U. S. court; then general supt. of the Ala. Mid. Ry., S. F. & W. Ry. west of Thomasville, and the Abbeville Southern Railroad. These comprise the principal roads I have been with.

3rd. Answering the 3rd direct interrogatory. I am acquainted with the cost of constructing and equipping such railroads as the Alabama Midland.

4th. Answering the 4th direct interrogatory. The average cost per mile of constructing and equipping such a road as the Alabama Midland is about 18 or 20 thousand dollars per mile.

5th. Answering the 5th direct interrogatory. The mileage of the Alabama Midland Railway is 207 $\frac{92}{100}$ miles, including the Luverne Branch, and including both parts of the road in Alabama and in Georgia.

6th. Answering the 6th direct interrogatory. The gross earnings of the Alabama Midland Railway for the fiscal year from July, '92, to June, '93, inclusive, were \$484,818.66. Operating expenses for the same period were \$568,362.34.

7th. Answering the 7th direct interrogatory. The Alabama Midland Railway since June 1st has been managed carefully and very economically and skillfully, and, I believe, honestly.

8th. Answering the 8th direct interrogatory. I can not state in detail what efforts have been made by the Alabama Midland Railway to secure traffic, but I know that all necessary soliciting agents have been employed for that purpose.

479 9th. Answering the 9th direct interrogatory. During the fiscal year from the 30th of June, '92, to July, '93, the amount of revenue derived from the noncompetitive freight traffic of the Alabama Midland Railway was \$174,588.43, and during the same period the revenue derived from the competitive freight traffic was \$152,862.33.

10th. Answering the 10th direct interrogatory. I am unable to state the freight rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F from Louisville, Cincinnati, and St. Louis, respectively, to Troy, Ala.

11th. Answering the 11th direct interrogatory. I am unable to state what proportions of said through rates were received by the roads south or east of Montgomery for transportation from Montgomery to Troy.

12th. Answering the 12th direct interrogatory. I am unable to state, not knowing what proportions of the through rates were received by the roads south or east of Montgomery for transportation from Montgomery to Troy, whether said rates were unreasonably high or reasonably low.

13th. Answering the 13th direct interrogatory. I do not consider 23 cents per 100 lbs. on cotton for rail transportation from Montgomery to Troy an unreasonably high rate, but it is a reasonably low rate, because it is about the usual rate for that distance on that class of road and country.

14th. Answering the 14th direct interrogatory. I am unable to state what were the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F from New York, Boston, and the Northeast to Montgomery.

15th. Answering the 15th direct interrogatory. I am not able to state what proportion of said through rates from New York, Boston, and the Northeast on the classes specified in the interrogatory were received by the Alabama Midland Railway Co. for transportation over its part of said through route.

16th. Answering the 16th direct interrogatory. Not knowing what proportions of said through rates were received by the Alabama Midland Railway Company for transportation over its part of said through route from Eastern points, I am unable to state whether said proportions were greater or less than the additional cost of transporting said traffic.

17th. Answering the 17th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that

may be material to the subject of this my examination, or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. I did not in my direct examination give the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F from Louisville, Cincinnati; and St. Louis, respectively, to Troy, not being able to do so, and for that reason I can 480 not further answer said cross-interrogatory.

2nd. Answering the 2nd cross. I am unable to state how long prior to March 1st, 1894, the rates inquired about from Louisville, Cincinnati, & St. Louis, respectively, to Troy and Montgomery and Mobile have been in effect; I am unable to give the rates which immediately preceded said rates, and I am unable to state whether or not the rates from said cities to Troy and Montgomery were greatly reduced in the latter part of May or the 1st part of June, 1894, or, if so, what said reduced rates were, or how long they were maintained.

3rd. Answering the 3rd cross. The distance via the L. & N. R. R. from Louisville to Montgomery is 490 miles; I do not remember the distance from Cincinnati to Montgomery, nor from St. Louis to Montgomery via that route. The distance from Montgomery over the Alabama Midland Railway to Troy is 53 miles; the distance by the Georgia Central road, according to my recollection, is about 75 miles. I am unable to state what rate per ton per mile is yielded by the proportion of the through rate from those cities through Montgomery to Troy charged for the haul from Montgomery to Troy; nor am I able to state what rate per ton per mile is yielded by the through rate from those cities, respectively, to Montgomery.

4th. Answering the 4th cross. On through shipments from Louisville, Cincinnati, and St. Louis to Troy via Montgomery, the cars in which the goods are shipped are sometimes carried through to Troy, and sometime the goods are transferred at Montgomery to cars on the Alabama Midland and Georgia Central companies. The expense of handling cars and inspecting them, and, if goods are transferred, the expense of transferring them, is incurred by the roads at Montgomery on such shipments through Montgomery to Troy. I can not state what such expense amount' to per car or per 100 lbs. of traffic. On through shipments from said cities to Troy and Montgomery, respectively, I do not think there is any difference between the terminal expenses at Troy and those at Montgomery.

5th. Answering the 5th cross. In my answer to the direct interrogatories I did not say that the proportion of the through rate charged by the Alabama Midland and Georgia Central roads for transportation from Montgomery to Troy were reasonable or unreasonable, and for that reason did not consider them either as local rates or parts of through rates. The cost of handling local freight is much greater than of handling through freight per ton per mile. I am not informed as to whether the proportion of the through rate received by said roads for the service of transportation from Montgomery to Troy is substantially the local rate to Troy or not. I am unable to state whether or not in making rates from Montgomery to Troy Montgomery is regarded as a basing point or distributing point or trade centre.

6th. Answering the 6th cross. Up to the end of the time I gave up handling the traffic myself, which was in 1892, the State commissions of Alabama and Georgia approved all freight tariffs before they went into effect, Alabama commission that part in this State and the Georgia commission that part in Georgia, but they did not undertake to prescribe or regulate through rates on interstate traffic, or the proportions of said through rates charged for that part of through hauls of such traffic which was in these states.

481 7th. To Mr. McLendon only.

8th. To Mr. McLendon only.

9th. Answering the 9th cross. The revenue of railroads generally has fallen off throughout the country considerably on account depressed financial condition of the country in the last two or three years. The revenue of the Alabama Midland Company for the fiscal year '92-3 was not materially reduced on account of cut rates or rate wars. It was a bad year, but not worse than the year just passed.

10th. Answering the 10th cross. I have no means of knowing and do not know the average actual cost per mile of constructing and equipping the Alabama Midland Railway.

11th. Answering the 11th cross. When cotton is shipped from Troy via Montgomery to New Orleans it is sometimes transferred at Montgomery from the cars in which it is shipped at Troy to cars on the L. & N. Road. I am unable to state what extra expense, if any, is incurred by the roads at Montgomery on such shipments, or what that expense amounts to per 100 lbs. or per bale.

482 *Answers of Theodore Welch to the original and cross interrogatories propounded to him in the above-entitled cause.*

THEODORE WELCH, being duly sworn, deposes and says :

1st. Answering the 1st direct interrogatory. My name is Theodore Welch ; age, 52 ; residence, Montgomery, Ala. ; occupation, general freight agent of the Louisville & Nashville Railroad and operated lines from Decatur to River Junction and New Orleans.

2nd. Answering the 2nd direct interrogatory. I have been engaged in the railroad business since 1872. For one month I was with the North Pacific Railroad in 1872 ; excepting this, the Louisville & Nashville Railroad is the only road with which I have been engaged. I have been with that company since 1st of Sept., 1873 ; for a few weeks as a clerk in the general freight office ; after that, as general agent until 1880. In that year I was appointed general freight agent of the lines south of Montgomery. In 1882 I was appointed general freight agent of the line, Decatur to Montgomery.

3rd. Answering the 3rd direct interrogatory. The through rates on classes specified in the 3rd direct interrogatory were as follows :

Through rates in effect March 1st, 1894, to Troy, Ala.

From—	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Louisville.....	140	139	113	95	78.5	62	45	59	37	32	69	66
Cincinnati.....	150	140	123	103	82.5	68	49	52	39	34	73	70
St. Louis.....	168	153	133	109	87.5	72	52	58	44	37	77	80

4th. Answering the 4th direct interrogatory. On March 1st, 1894, the proportions of the through rates, referred to in interrogatory No. 3, received by the roads south and east of Montgomery for transportation from Montgomery to Troy, were as follows :

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Per 100 lbs.....	42	38	35	32	26	21	21	19	13	12	21	26 bbl.

5th. Answering the 5th direct interrogatory. I think the proportions allowed Montgomery to Troy, as stated in the previous question, entirely reasonable, and certainly not excessive. The rates so charged are the regular established rates on the Alabama Midland Railway for distances of 50 or 55 miles. The question propounded is really a difficult one to answer for several reasons. If the earnings of the Alabama Midland Railway are not sufficient to pay operating expenses, fixed charges, and pay a reasonable dividend, the rates are too low and ought to be advanced. I believe it is a reasonable proposition that common carriers are entitled to earnings sufficient to meet operating expenses and pay a reasonable dividend on the stock. Failing to meet these obligations would make it appear that the rates of freight charged are unreasonable, and hence my answer in regard to the use of the word "reasonable." The rates charged by the Alabama Midland Railway, as stated above, Montgomery to Troy, compare very favorably with the rates for like distances on other roads in Alabama, and in the greater part of the South, and I believe, as a matter of fact, that these particular rates had the endorsement of the Alabama State commission. The question of the reasonableness of the rates of freight must depend upon a multitude of surrounding conditions, but in no case should the rate-making power lose sight of the fact that the earnings should be such as to meet operating expenses, fixed charges, and to pay a reasonable dividend on the stock. If this result is not reached I suppose it would be proper to say that the rates were not high enough, and therefore not reasonable. Certain it is, it could not be said they were unreasonably high.

6th. Answering the 6th direct interrogatory. I do not think 23 cents per 100 lbs. for rail transportation from Troy to Montgomery on cotton unreasonably high ; on the contrary, I think it reasonably low—too low, if the Alabama Midland Railway is not earning enough to meet operating expenses, fixed charges, and pay a reasonable dividend. The matter of establishing rates is not by any means a fixed science, and a line of rates that might be reasonable in 1892 might really be unreasonable in 1893—too high or too low.

7th. Answering the 7th direct interrogatory. The shortest railroad line from Savannah to Montgomery is as follows: Central of Georgia, Savannah to Lyons, 75 miles ; Savannah, Americus & Montgomery, Lyons to Montgomery, 266 miles ; total, Savannah to Montgomery, 341 miles.

8th. Answering the 8th direct interrogatory. The distance from Savannah to Troy, via the Alabama Midland Railroad and its connections, is 360 miles.

9th. Answering the 9th direct interrogatory. Lines running westerly from Boston, New York, Philadelphia, and Baltimore, and other Eastern

2nd. Answering the 2nd cross. The rates already quoted as being in effect on March 1st, 1894, from Cincinnati, Louisville, & St. Louis to Mobile had been in effect since December 1st, 1888. Prior to December 1st, 1888, the rates to Mobile were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati	98	83	73	54	44	39	28	27	27	22	31	28
Louisville.....	90	75	65	50	40	35	25	25	25	20	28	25
St. Louis.....												40

The rates in effect to Montgomery Nov. 1st, 1890, and down to and including March 1st, 1894, were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati.....	108	102	88	71	59	47	32	33	26	22	52	37
Louisville.....	98	92	78	63	52	41	28	31	24	20	48	33
St. Louis.....	126	115	98	77	64	51	35	39	31	25	56	43

The rates in effect prior to November 1st, 1890, were as follows (to Montgomery):

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati.....	108	102	88	71	59	47	32	33	30	26	52	37
Louisville.....	98	92	78	63	52	41	28	31	28	24	48	33
St. Louis.....	126	115	98	77	64	51	35	39	35	29	56	43

485 The rates in effect June 1st, 1893, to March 1st, 1894, to Troy were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati.....	150	140	123	103	82.5	68	49	52	39	34	73	63
Louisville.....	140	130	113	95	75.5	62	45	50	37	32	69	59
St. Louis.....	168	153	133	109	87.5	72	52	58	44	37	77	69

The rates in effect prior to June 1st, 1893, to Troy were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati.....	150	140	123	103	85	68	53	52	39	34	73	63
Louisville.....	140	130	113	95	78	62	49	40	37	32	69	59
St. Louis.....	168	153	133	109	90	72	56	48	44	37	77	69

The rates to Montgomery were reduced June 9th, 1894, and expired July 31st, 1894, and were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati	48	42	38	32	27	22	20	33	26	22	52	44
Louisville	38	32	28	24	20	16	16	31	24	20	48	40
St. Louis	66	55	48	38	32	26	23	39	31	25	56	54

The rates from New York to Montgomery were made effective June 2nd, 1894, and were as follows (expiring July 31, 1894):

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
New York	40	34	30	26	21	17	17	48	40	39	58	73

The reduced rates effective June 20th, 1894, and expiring July 31st, 1894, to Troy were as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
Cincinnati	90	80	73	63.5	46.5	41.5	37	52	39	34	73	70
Louisville	80	70	63	55.5	39.5	35.5	33	50	37	32	69	66
St. Louis	108	93	83	69.5	51.5	45.5	40	58	44	37	77	80

The rates from New York to Troy were reduced, effective June 10th, 1894, were as follows (expiring July 31st, 1894):

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
New York	62	53	47	42	35	29	29	58	47	45	70	92

3rd. Answering the 3rd cross. The distance via the L. & N. R. R. from Louisville to Montgomery is 490 miles; from Cincinnati, 600 miles; from St. Louis, 628 miles. The distance from Montgomery over the Alabama Midland to Troy is 52 miles, and over the Georgia Central it is 70 miles. As before stated, the proportions of the through rates from Cincinnati, Louisville, and St. Louis, Montgomery to Troy, in effect March 1st, 1894, were as follows:

Classes.											
1	2	3	4	5	6	A	B	C	D	E	F
42	38	35	32	26	21	21	19	13	12	21	26

The rates last above stated pay per ton per mile, Montgomery to Troy, as follows :

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
16.2	14.6	13.5	12.3	10	8.1	8.1	7.3	5	4.6	8.1	10	10

The proportions, Cincinnati to Montgomery, of the rates to Troy, in effect March 1st, 1894, were :

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
108	102	88	71	56.5	47	28	33	26	22	52	37	44

486 The last above rates paid per ton per mile, Cincinnati to Montgomery :

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
3.6	3.4	2.93	2.36	1.88	1.57	.93	1.1	.87	.73	1.73	1.23	1.47

The proportions, Louisville to Montgomery, of the rates, Louisville to Troy, in effect March 1st, 1894, were:

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
98	92	78	63	49.5	41	24	31	24	20	48	33	40

The last above quoted rates paid per ton per mile, Louisville to Montgomery :

1	2	3	4	5	6	A	B	C	D	E	H	F
4	3.76	3.18	2.53	2.02	1.67	.98	1.27	.98	.82	1.96	1.35	1.63

The proportions, St. Louis to Montgomery, of the rates, St. Louis to Troy, in effect March 1st, 1894, were as follows :

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
126	115	98	77	61.5	51	31	39	31	25	56	43	54

The last above named rates paid per ton per mile, St. Louis to Montgomery, as follows :

1	2	3	4	5	6	A	B	C	D	E	H	F
4.02	3.66	3.12	2.45	1.96	1.62	.99	1.24	.99	.80	1.78	1.37	1.72

It is proper, however, to explain how the rates from St. Louis to Montgomery are divided. First are allowed from Evansville to Montgomery the Louisville rate, which is also the Evansville rate. The earnings of the Louisville & Nashville Railroad out of the rate Evansville to Montgomery, is the difference between such rates and the bridge toll, Evansville to Henderson. The difference between Evansville proper rates and what have been given as the St. Louis rates of course becomes the proportion allowed St. Louis to Evansville, and out of the proportion is deducted St. Louis bridge toll or transfer. To Montgomery the first-class rate, St. Louis to Montgomery, is \$1.26, and Evansville to Montgomery, 98 cents; divided: Henderson Bridge 2 cents, L. & N. 96 cents. The earnings, St. Louis to Evansville, 28 cents; divide: Bridge 4 cents, L. & N., East St. Louis to Evansville, 24 cents.

4th. Answering the 4th cross. On through shipments from Louisville, Cincinnati, and St. Louis to Troy via Montgomery, in case of carloads, as corn, flour, meat, etc., the freight would go through to Troy in the same cars in which it is brought to Montgomery; at least this is the general rule. Less than carload shipments destined to Troy would doubtless all be transferred at Montgomery to cars on the Alabama Midland and Georgia Central railroads. The extra expense, if any, incurred at Montgomery is a matter with which the transportation department is much more familiar than the traffic department. The expense would depend frequently upon the amount to be transferred. For instance, a given force might be able to transfer thirty cars of freight in the working hours of a day, yet not have more than 10 or 12 cars to transfer, in which event the cost would be greater per car than as though the force had a sufficient number of cars to keep it constantly busy. With the data before me I am not able to state what such expense amounts to per car or per 100 pounds. As indicated above, the cost would depend upon the volume handled with reference to the cost of labor. Supposing your questions refer to the terminal expenses of the Alabama Midland Railway at Montgomery, and of the Alabama Midland Railway at Troy, I would say it would depend upon the volume of business handled at each of said points and the expense at each point. If, however, the questions relate to the terminal cost per car by both roads at Montgomery, that is, the delivering and receiving road, and the cost of the delivery road at Troy, then, I must repeat, it depends upon the amount of business transacted by the several roads with reference to the actually paid out money.

487 5th. Answering the 5th cross. In saying in my answer to the direct interrogatories that the proportion of the through rates received by the Alabama Midland and Georgia Central railroads for transportation from Montgomery to Troy is reasonable, I am basing my opinion upon the rates considered as local rates. The position taken by me in the direct examination is that the railroads operated between Montgomery and Troy are entitled to their local rates. The cost of handling local freight is greater than the cost of handling through freight per ton per mile. A carload of freight shipped from Louisville to Montgomery would, in the sense that the word "through" is used in this connection, be a through shipment. A shipment of a carload of freight from Louisville to Greenville, would, in the sense that the word has been used, be through to Montgomery, but would not be considered a through shipment to Greenville in the sense

that the rate per mile, Montgomery to Greenville, should not exceed the rate per mile, Louisville to Montgomery. It is a well-established principle, especially in the Southern States, that the road making a delivery to one of its local stations, as Montgomery to Greenville, is entitled to its full local. The proportion of the through rate received by the Alabama Midland and Georgia Central railroads for the service of transportation, Montgomery to Troy, is substantially the local rate, Montgomery to Troy. This is a fact as to the Alabama Midland Railway, but I can not speak definitely as to the Georgia Central. In making rates from Louisville or other competitive points to Troy through Montgomery, Montgomery is regarded as what is known as a basing point, as are also Columbus and Union Springs, and the rate from Montgomery to Troy on business from Louisville is the same as the local rate from Montgomery to Troy.

6th. Answering the 6th cross. The railroad commission of Alabama does not undertake to prescribe or regulate through rates on interstate traffic, or the proportion of such through rates charged for the part of such through hauls of such traffic as may be in this State, but I am not advised as to the action of the Georgia railroad commission in such cases, but am of the opinion that it does not exercise any such power.

7th. The 7th cross to Lee McLendon only.

8th. The 8th cross to Mr. McLendon only.

9th. Answering the 9th cross. The revenue of some railroads have fallen off during the last 20 months, doubtless because of the financial depression. It is a fact, however, that when some railroads were falling off largely in their earnings other roads were increasing their earnings. I am not advised as to whether the revenue of the Alabama Midland Railway for the fiscal year 1892-3 was reduced by cut rates or rate wars.

10th. The 10th cross to Mr. Dunham only.

11th. Answering the 11th cross. When cotton is shipped via Montgomery through New Orleans from Troy it goes through in the same cars, as a general thing. I do not exactly understand what is meant by expenses in this connection. Certainly no more expense is incurred on cotton than on other freight, and there is, of course, certain terminal expenses necessarily incurred at a terminal point in delivering freight by one road to another.

488 *Answers of J. Greil to the direct and cross interrogatories propounded to him in the above-entitled cause.*

J. GREIL, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is Jacob Greil; age, 55; residence, Montgomery, Ala.; occupation, wholesale grocery merchant.

2nd. Answering the 2nd direct interrogatory. I have been engaged in the general merchandise business for 28 years, and in the wholesale business about 22 years.

3rd. Answering the 3rd direct interrogatory. I have received shipments at Montgomery by river which came via Mobile from points west of Mobile. Several years ago, when there was such a great difference in the rates of freight between Montgomery and Mobile, the merchants of Montgomery went to work and put two steamers on the Alabama River, the

Jewel and the Alabama, which were run by said merchants, who were the principal stockholders, between Montgomery and Mobile. Our house shipped a large amount of goods from the West by Mobile and upon these boats to Montgomery, consisting of flour, grain, oats, corn, flasks, and whiskies, and a great many articles of merchandise which it would be impossible for me to remember. These shipments comprised many carloads and came by nearly every boat. I am not able to state more definitely the amount in the aggregate.

4th. Answering the 4th direct interrogatory. I have received at Montgomery shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. These shipments were received at various times, but were not so very large. They were received during the same period referred to in my answer to the 3rd interrogatory, when that line of boats was established by the merchants. These shipments consisted of coffees, sugars, case goods, etc. These shipments extended over a period of some two or three years, and we are making such shipments now, but not in such large quantities as we did then, by sailing vessels to Mobile and by steamers to Montgomery.

5th. Answering the 5th direct interrogatory. To the best of my knowledge there are three steamboats now running on the Alabama River between Montgomery and Mobile. The average time required for a boat to go from Montgomery to Mobile and return is about one week.

6th. Answering the 6th direct interrogatory. The Alabama River is navigable by steamboats between Montgomery and Mobile every month in the year, unless there is an exceptionally dry season, which usually comes about September. This year these steamers have been coming regularly, and have never missed a trip.

7th. Answering the 7th direct interrogatory. The fact that the Alabama River is navigable by steamboats between Montgomery and Mobile undoubtedly has the effect and is the only cause of keeping down the rates charged by railroads between those two cities.

489 8th. Answering the 8th direct interrogatory. The rates now charged by railroads between Montgomery and Mobile are lower than they formerly were. These reductions were made at the time the boats were put on the Alabama River referred to in my answer to the 3rd direct interrogatory, which was several years ago. The placing of these boats in the river was the cause of these reductions.

9th. Answering the 9th direct interrogatory. I am not sufficiently acquainted with the rates of freight between New York and Mobile by water to enable me to state what would be the effect, if any, if an increase of rates specified in the interrogatory towards inducing shipments of freight from New York to Mobile by ocean and thence by river to Montgomery.

10th. Answering the 10th direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as specified in the interrogatory, the effect would be that all freights for Montgomery from those points would be shipped to Mobile by river and thence by river to Montgomery.

11th. Answering the 11th direct interrogatory. The difference between the circumstances and conditions effecting the transportation of traffic to and from Montgomery and Troy is that Montgomery has a navigable

river and Troy has none at all. Montgomery has more competing lines of railway than Troy, and we can go north, east, south, and west by different lines, which Troy can not do, because she has only two rail lines, and really but one trunk line.

12th. Answering the 12th direct interrogatory. No 12th to Greil.

13th. Answering the 13th direct interrogatory. I do not know the population of the town of Troy, Alabama; it is a small town. There are two railroads running to that town. They are the Alabama Midland, which connects with the Plant system, and the Mobile & Girard, which connects with the Georgia Central system. There is no water transportation at Troy. I know of but one wholesale merchant in the town of Troy. I do not know how many retail merchants there are. I do not know the number of bales of cotton received there annually. I do not know what manufacturing industries are located there, except a fertilizer factory. I do not know the annual output of this factory. I do not know the total of the manufacturing or mercantile business done there annually.

14th. Answering the 14th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

490 Cross-interrogatories :

1st. Answering the 1st cross. We have received whiskies from Peoria, Ill., and Cincinnati and Chicago, flasks in carload lots from Louisville, flour from Louisville and from points in Ind., and various other kinds of merchandise from points which I can not now remember. All came to us at Montgomery by river via Mobile.

2nd. Answering the 2nd cross. The shipments testified about in my direct examination as having been received at Montgomery via Mobile by river from Boston, New York, Philadelphia, Baltimore, and other Eastern cities consisted of sugars, coffees, spices, peppers, shot, snuff, mackerel, and can goods.

3rd. Answering the 3rd cross. The average time required for a boat to go from Montgomery to Mobile and from Mobile to Montgomery, making all the stops, is one week. The average time required for a shipment by rail to come from Montgomery to Mobile or from Mobile to Montgomery is about 12 hours.

4th. Answer to 4th cross. The same steamers run on the Alabama River all the year round, and they are considered light-draft steamers, but are so constructed so as to have a large capacity for carrying freight. In the dry seasons in the fall, which sometimes last as long as three months in a year, only light-draft vessels can run, and during the balance of the year heavily freighted vessels can run on the river.

5th. Answering the 5th cross. During the time referred to by me in my answers to the direct interrogatories, when the line of steamboats was established on the Alabama River by the merchants of Montgomery, the largest proportion of shipment to me from points west of Mobile came to me by river at Montgomery via Mobile, but I can not state more definitely what proportion so came. But since rail rates have been readjusted satisfactory to merchants here most of our goods come by rail. I am unable to state what was the average of my firm's total shipments per week, per

month, or per year from said points to Montgomery by all routes during the time I have received said shipments by river via Mobile with any degree of accuracy, but I can state that our shipments from both the East and the West, which came by all routes, amounted to probably \$600,000 or more per annum.

6th. Answering the 6th cross. During this same time above referred to, when these boats were placed on the river several years ago, the larger proportion of my shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities came to me at Montgomery by river via Mobile, and the rest by rail or other routes; I am unable to state more definitely. Nor can I state definitely the average of my total shipments per week, per month, or per year from said cities to Montgomery by all routes during the time I was receiving such shipments by river, but will state, as I did in answer to the 5th cross-interrogatory, that the aggregate shipments received by my firm from both East and West amounted to about \$600,000 per annum; but I can not specify what proportion of said amount was for shipments from the East, or what proportion from the West.

491 7th. Answering the 7th cross. I do not know the distance by river from Mobile to Montgomery; the distance by rail is 180 miles.

8th. Answering the 8th cross. At present there is a large amount of local business to and from landings intermediate between Montgomery and Mobile done by steamers on the Alabama River, and this does constitute the bulk of the business done by said steamers. Whether or not said steamers could maintain themselves on the through business would depend upon the patronage received, but should the railroads raise their rates I am satisfied that the through business the boats would then receive would maintain them. At present their through business is small in comparison with their local, but in former years, spoken of by me, the larger proportion was through freight.

9th. Answering the 9th cross. The risk is greater and the insurance rate higher on shipments by steamer than by rail between Montgomery and Mobile. Usually goods are not insured when shipped by rail, but when shipped by river the insurance is about $\frac{1}{2}$ %. This expense is usually born by the transportation company.

10th. Answering the 10th cross. Each boat makes a round trip per week between Montgomery and Mobile, and there are three boats on the river. I do not know how many trains carrying freight there are per day from Montgomery to Mobile or from Mobile to Montgomery.

11th. Answering the 11th cross. I do, and other merchants of Montgomery also, sell goods at Brundidge, Ozark, and Dothan, stations and towns all east of Troy on the Alabama Midland Railway.

12th. Answering the 12th cross. The only data I can now recall upon which I base my estimate as to the effect of an advance in rail rates such as is inquired about in the direct interrogatories, in inducing shipments from points west of Mobile to Mobile and by river to Montgomery, is based upon the fact that at one time within my knowledge such shipments were greatly increased on account of the rail rates being higher than they are now; such high rail rates having induced the merchants of Montgomery to place a line of boats on the river between Montgomery and Mobile, and then the largest proportion of our shipments from Western points came

via Mobile to Montgomery upon said boat lines. The said line of boats were continued in operation for two or three years doing the largest proportion of such business, when the railroad rates were reduced to a point satisfactory to the merchants at Montgomery, when said shipments again went to the railroads, and since then comparatively little through business is done by the boats. In case the railroads at any time should increase their rates, a large proportion of the through business both from the East and West would again go to the boats. And furthermore, from my general business knowledge and experience, I know that in the event it should become necessary, on account of the high rail rates, that all the boats necessary to do the bulk of the business done at Montgomery could be procured for the river service, and all vessels necessary in connection with said river boats for ocean traffic could be obtained.

492 *Answers of M. B. Houghton to the direct and cross interrogatories propounded to him in the above-entitled cause.*

M. B. HOUGHTON, being duly sworn, deposes and says :

1st. Answering the 1st direct interrogatory. My name is M. B. Houghton; age, 47; residence, Montgomery. I have been a banker, merchant, and am now president of the Commercial and Industrial Association of Montgomery.

2nd. Answering the 2nd direct interrogatory. I have been engaged in my present occupation about 5 years.

3rd. Answering the 3rd direct interrogatory. I have never received any shipments at Montgomery which came by river via Mobile from points west of Mobile, and for that reason can not further answer this interrogatory.

4th. Answering the 4th direct interrogatory. Never having been engaged in the mercantile business in the city of Montgomery, I have never received shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, and for that reason can not further answer this interrogatory.

5th. Answering the 5th direct interrogatory. I am unable to state how many steamboats are now running on the Alabama River between Montgomery and Mobile. The average time now required for a boat to go from Montgomery to Mobile and return, making all the landings, is about 6 days.

6th. Answering the 6th direct interrogatory. The Alabama River is navigable between Montgomery and Mobile for heavily laden boats about ten months in the year, and for lightly laden boats every month during the year.

7th. Answering the 7th direct interrogatory. The fact that the Alabama River is navigable by steamboats between Montgomery and Mobile has the effect, in my opinion, of making the rates charged by railroads between those points lower than they otherwise would be.

8th. Answering the 8th direct interrogatory. My information, derived from business sources, is that the rail rates between Montgomery and Mobile are lower than they formerly were. I am unable to state when the various reductions were made, and what were the causes of those reductions.

9th. Answering the 9th direct interrogatory. If the rail rates from New York to Montgomery should be increased, as specified in this interrogatory, the effect would be to stimulate the shipment of such freight from New York to Mobile by ocean and thence by river to Montgomery.

10th. Answering the 10th direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis were increased, as specified in this interrogatory, to Montgomery, the effect would be to stimulate the shipment of freight from those points to Mobile by river, and thence by river to Montgomery.

493 11th. Answering the 11th direct interrogatory. If the rail rates on cotton intended for export and shipped from Montgomery to Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per 100 lbs., the effect would be to greatly increase the shipment of such cotton from Montgomery by river to Mobile, and thence direct by vessel to European ports, but I do not think it would increase the shipment of cotton from Montgomery to Mobile by river and thence by vessel to Atlantic ports.

12th. Answering the 12th direct interrogatory. The difference in the circumstances and conditions effecting the transportation of traffic to and from Montgomery and Troy is as follows: Montgomery is a city of an estimated population of from 30 to 35 thousand people; it has five railroads, consisting of the Montgomery and Mobile, and the South & North railroads, parts of the L. & N. system; the Alabama Midland, being a part of the Savannah, Florida & Western system; the M. & E. Ry., being a part of the Central of Georgia system; the Savannah, Americus & Montgomery Railway, running from Montgomery to Savannah, Georgia; the Western Railway of Alabama, reaching from Akron to Atlanta, Georgia, and the Alabama River, navigable from Montgomery to Mobile. These railroads reach in all directions and afford quick transportation to the Gulf and Atlantic ports. Montgomery receives from 125 to 165 thousand bales of cotton annually; it has great warehouse and compressing facilities for handling, marketing, and disposing of this crop; its wholesale and retail trade and commerce is estimated as high as \$40,000,000 annually, and reaches into four States; it is also a great lumber distributing market, and is also a considerable manufacturing and industrial centre; it has about 115 manufacturing establishments of various kinds, large and small (estimated); manufactures beer, soap, boilers, ice, cars, fertilizers, cotton-seed oil, cotton-seed meal, confectioneries, barrels, and engines, cane mills, cotton presses, wagons, buggies, sacks, brooms, and various other manufactures. While Troy is a city of a population of about 3,000 (estimated) inhabitants; has only two railroads, the Alabama Midland and the Mobile & Girard; their cotton receipts are less than one-fourth of the receipts at Montgomery; their wholesale and retail trade is insignificant as compared with Montgomery; it is an inland town and has no competition by water.

13th. Answering the 13th direct interrogatory. The following independent systems or trunk lines are at Montgomery: Louisville & Nashville, the Savannah, Florida & Western, the Central of Georgia, the Savannah, Americus & Montgomery, and the Western of Alabama; I am unable to state definitely the number of boat lines plying the Alabama River between Montgomery and Mobile, but there are two or more.

14th. No 14th direct interrogatory to Houghton.

15th. Answering the 15th direct interrogatory. The population of the town of Troy, Alabama, is generally estimated from 3,000 to 3,500; there are two railroads that cross at this town; they have the connections of the Plant and the Central of Georgia systems; there is no water transportation to Troy; I am not able to state how many wholesale and how many retail merchants do business in the town of Troy; I can not
 494 state definitely the exact number of bales of cotton received at Troy annually, further than to say, as I did in my answer to the 12th direct interrogatory, that their receipts are one-fourth of those at Montgomery at least, which amount to from 125 to 165 thousand bales annually; I am unable to state what manufacturing industries are located at Troy, or what is their annual output, nor am I able to state the total of the manufacturing and mercantile business done there annually.

16th. Answering the 16th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. I did not state in my direct examination that I had received shipments by river at Montgomery which came via Mobile from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

2d. Answering the 2nd cross. I did not state in my direct examination that I had received shipments at Montgomery which came via Mobile from Boston, New York, Philadelphia, Baltimore or other Eastern cities, and for that reason can not further answer this interrogatory.

3rd. Answering the 3rd cross. The average time required for a boat to go from Mobile to Montgomery, without stopping at all local landings, is about 2½ days, and from Montgomery to Mobile, about 2 days. I am unable to state the average time required for a shipment to go from Montgomery to Mobile or from Mobile to Montgomery by rail.

4th. Answering the 4th cross. The Alabama River is navigable at certain seasons of the year only for light-draft steamers. These seasons are irregular, sometimes occurring in Nov. & Oct. and again in Aug. & Sept., and usually last from 30 to 60 days out of a year.

5th. Answering the 5th cross. I did not state in my direct examination that I had received shipments from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

6th. Answering the 6th cross. I did not state in my direct examination that I had received shipments from Boston, New York, Philadelphia, Baltimore or other Eastern cities which came to me at Montgomery by river via Mobile, and for that reason can not further answer this cross-interrogatory.

7th. Answering the 7th cross. I am unable to state accurately the distance from Montgomery to Mobile by river, but it is about 480 miles. The distance by rail is 180 miles.

495 8th. Answering the 8th cross. There is a large amount of local business between landings on the Alabama River intermediate between Montgomery and Mobile done by steamers on the Alabama River, and under the existing circumstances this local business does comprise the

bulk of the business done by said steamers. Said steamers could not maintain themselves on the through business now done by them on said river. Their through business is much less than their local business, but I am unable to state the proportion.

9th. Answering the 9th cross. The risk is slightly greater and the insurance rate some higher on shipments by river than by rail between Montgomery and Mobile, but I am unable to state this difference.

10th. Answering the 10th cross. The different lines of steamboats now make regular weekly round trips between Montgomery and Mobile and Mobile and Montgomery. I am unable to state how many trains carrying freight there are per day from Montgomery to Mobile or from Mobile to Montgomery.

11th. Answering the 11th cross. Not being a merchant, I am unable to answer the 11th cross.

12th. Answering the 12th cross. The data upon which I base my estimate as to the effect of an advance in rail rates such as is inquired about in the direct interrogatories towards inducing shipments by ocean from New York and other Eastern cities to Mobile and thence by river to Montgomery, and from Ohio River points by river to Mobile and thence by river to Montgomery, are as follows: The people of Montgomery several years ago formed what is known as the Montgomery Trade Company, and placed a line of steamers on the Alabama River and plied them between Montgomery and Mobile for a year or more, making a specialty of doing through business and also the local business, consequently the rail rate from the points named to Montgomery were materially lessened. In the event the rail rates were again advanced, or any unfair discrimination was made against Montgomery, it is practicable to obtain all the steamboats necessary to do all the business from the Eastern and Western points to Montgomery, and vessels can be obtained to come from foreign ports to Mobile. Furthermore, I have information which comes to me as president of the Commercial & Industrial Association of Montgomery, and is derived from the merchants, manufacturers, and shippers of Montgomery.

496 *Answer of W. F. Vandiver to original and cross interrogatories propounded to him in the above-entitled cause.*

W. F. VANDIVER, being first duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is W. F. Vandiver; I am forty-four years old, and am engaged in the business of wholesale groceries, tobacco, and fertilizers; my place of residence is Montgomery, Alabama.

2nd. Answering second direct interrogatory. I have been engaged in my present occupation for twenty-three years.

3rd. Answering third direct interrogatory. Yes. Every year since I have been in the business, I have received more or less freight from New Orleans and Western points, as St. Louis, Louisville, Chicago, Milwaukee, Missouri River points by steamers in the Alabama River. The movement from New Orleans has consisted of sugar and molasses, and other articles bought in New Orleans. From the West I have within the last comparatively few years received a great deal of flour, grain, and other Western produce. On one occasion, several years ago, I bought a

thousand barrels of flour by the way of Mobile in one shipment. It has not been uncommon to receive several carloads of sugar from New Orleans, on account of the rate to Mobile plus the low rate to Montgomery by the Alabama River. I frequently have occasion to ship freight to Mobile, thence by boat to point that might otherwise be reached, were the rate adjusted lower to Montgomery. I refer now particularly to points on the rivers. This movement, by Mobile and river to Montgomery, is more or less continuous.

497 4th. Answering fourth direct interrogatory. Except last year, we have shipped large quantities of bagging, ties, coffee, sugar, soap, and case goods generally, from New York, Boston, Philadelphia, Baltimore, and other Eastern cities, by steamboat to Mobile, Alabama. The shipments at present by sailing vessels (Benner Line) are very considerable, and are growing larger all the while, on account of the great discrepancy in the rate to Mobile, and then the low rate by the Alabama River. I am informed that a company is now organizing for the purpose of re-establishing steamers via the sea from the Eastern markets to Mobile. Should this be accomplished, and the present rates to Montgomery be maintained, the business will sooner or later, in this section, be transferred to that route almost exclusively.

5th. Answering fifth direct interrogatory. At this particular time there are only three steamers plying the Alabama River, Mobile to Montgomery. There are, however, four steamers, owned as follows: The People's Line, owned by the merchants of Montgomery and Selma and a few property owners in each place, operating the "Tinsie Moore," tonnage capacity 300 tons; the Quill line of steamers, owned by a private company in Mobile, operating the steamers "Nettie Quill," with a tonnage capacity of 400 tons, and the "Carrier," tonnage capacity 250 tons; the steamer "Alto," owned by Capt. Finnigan and Capt. Barrie, of Mobile, with a tonnage capacity of about 400 tons, making the total tonnage capacity on the Alabama River 1,350 tons. Three of these steamers are run regularly during the summer months, arriving at Montgomery every Tuesday, Thursday, and Friday, leaving Mobile every Monday, Tuesday, and Saturday, each making the round trip once during the week. In the winter time the fourth boat is run during the busy season.

498 6th. Answering the sixth direct interrogatory. The Alabama River is navigable for twelve months during the year by steamboats between Montgomery & Mobile.

7th. Answering seventh direct interrogatory. In 1886 the merchants of Montgomery, on account of the high rate in force at Montgomery as compared with Mobile, appealed to the Southern Railway and Steamship Association for a reduction in rate from both Eastern and Western points. That appeal was unheeded, and the merchants, feeling that they were compelled to have relief in order to maintain their business, organized a stock company in Montgomery, with a capital of \$35,000, and bought the steamers "Alabama" and "Jewel," having each a tonnage capacity of 400 tons, and ran them on the Alabama River for two years, until they succeeded in securing an adjustment of rates more satisfactory to them, but still not such rates as placed them on an equality with Mobile. In 1890 we were advised that the railroads were agitating the question of increasing the rates to Montgomery. The merchants of this city, becoming alarmed

lest that might be done, decided to organize what is known as the People's Line and buy the steamer "Tinsie Moore" and place her on the Alabama River, in case an emergency arose that would make her use necessary on the Alabama River, to protect the interests of the Montgomery merchants. This boat is and will be retained in the Alabama River. The rates between Montgomery and Mobile are lower than rates from either Mobile or Montgomery to many intermediate points, and even this does not secure all the business to the rail lines, on account of the boats hauling freight from Mobile to Montgomery and Montgomery to Mobile cheaper than the established rail rates. Notably, lately, there has been considerable cotton-seed and meal hauled by boat from Montgomery to Mobile. The presence and use of these boats in the river prevent the railroads from advancing rates.

499 8th. Answering the eighth direct interrogatory. The rail rates between these two cities are lower than formerly, and I have every reason to believe that this reduction has been caused by water competition. I can not give the dates of the various changes.

9th. Answering the ninth direct interrogatory. In the light of what has been said as regards water competition, the proposition is an absurdity, and would drive the business all to water routes.

10th. Answering tenth direct interrogatory. The immediate effect would be the movement of immense quantities of freight to Mobile, thence by the Alabama River to Montgomery, and the ultimate result would be simply to transfer the entire business practically via the Ohio and Mississippi rivers, New Orleans, thence to Mobile, and up the Alabama River, and distribute it through this section.

11th. Answering the eleventh direct interrogatory. Such adjustment would certainly divert the entire business from this section by the Alabama River to Mobile, thence by steamers direct to European ports.

12th. Answering twelfth direct interrogatory. It seems to me from the answers I have given, establishing the fact that the Alabama River is navigable twelve months of the year, and that there is organized water opposition to the railroads on this river, both from the East and the West, that it would be unnecessary for me to say more than this to establish the fact that

500 we have water transportation which is bound to act as a factor, more or less, in establishing rates to this city. The Interstate Commerce Commission, in all their decisions, except the case of Troy, that it has been my privilege to read, and I think I have seen most of them, have conceded that geographical position and conditions must prevail in establishing rates to jobbing cities where they have the benefit of water transportation. Then, again, we have in the city of Montgomery very large wholesale and retail merchants in all lines and classes of business reaching out into the States of Georgia, Florida, and Mississippi, as well as Alabama. I have in my own employ four travelling salesmen. You understand that I am only in the grocery business. There are dry goods houses here that use equally as many. There are several other houses using two or three travelling men. There are millions of capital invested in this jobbing business, and, in fact, Montgomery is a jobbing and wholesale city, while Troy, confined to my certain knowledge within the bounds of one or two counties adjacent, can not be considered, in any sense of the word, upon any principle of justice, a jobbing town, much less a city. Montgomery has three

large compresses for cotton. She receives from 130,000 to 160,000 bales of cotton annually, and in addition to water transportation, she has eight lines of railway extending out into every corner and section of the country, and is entitled to the advantages and conditions which surround her; and in addition to these, we shall very soon have the ninth railroad, the Montgomery, Tuskaloosa & Memphis Railroad.

13th. Answering thirteenth direct interrogatory. There are from 130,000 to 160,000 bales of cotton handled annually in Montgomery.

14th. Answering the fourteenth direct interrogatory. There are five independent systems of railroad at Montgomery: The Louisville & Nashville, the Central, the Alabama Midland, the Savannah, Americus & Montgomery, and the Western Railway of Alabama.

15th. Answering the fifteenth direct interrogatory. The population of Troy, Alabama, is . There are two railroads running into that town, the Plant system and the Central of Georgia system, and has no other railroad connection. There is no water transportation to Troy. About wholesale and retail merchants do business in Troy. About bales of cotton are received annually in said town. I do not know how many manufacturing industries are located there. I only know of one, the Troy Fertilizer Co., and I do not know what the annual output is. I am not sufficiently informed on the subject to state how much mercantile and manufacturing business is done there annually.

16th. Answering the sixteenth direct interrogatory. I have already, in my foregoing answers, stated the facts as fully as I am able to do, and refer especially to my answer to the 12th direct interrogatory. In addition, I desire to state that which seems to have been overlooked, that if circumstances should necessitate the advance of 13 cents per hundred to Atlantic ports, it would also necessitate an advance of like amount to the Gulf ports, say New Orleans, and in the event of such an advance it would certainly drive the business to the Alabama River via Mobile, and thence by rail to New Orleans, and the ultimate result would be the establishment of a line of steamers direct from Montgomery to New Orleans, carrying cotton during the cotton season to New Orleans, and bringing back in return large quantities of Western produce, which would be distributed along this entire section. There is at present, and has been for a number

of years, many thousand bales of cotton shipped out of Montgomery by river via Mobile, thence by rail to New Orleans. I mean that this is being done even with the present adjustment of rates to a considerable extent, and should the same advance of rates to New Orleans and the Gulf ports by rail occur that is suggested to the Atlantic ports of 13 cents per 100, the cotton from this section would practically all go to Montgomery.

Cross-interrogatories:

1st. Answering first cross. I have received shipments by river at Montgomery from the following points west of Mobile, to wit: Milwaukee, Chicago, Cincinnati, Evansville, St. Louis, Kansas City, New Orleans, and San Francisco. Such shipments consisted largely of flour, grain, sugar, molasses, cement, and case goods, such as potash, salmon, starch, sardines, etc.

2nd. Answering second cross. The shipments received by me by river via Mobile from Boston, New York, Philadelphia, and Baltimore con-

sisted of sugar, coffee, potatoes, bagging and ties, and large quantities of case goods.

3rd. Answering third cross. The average time required for a boat to go from Mobile to Montgomery and return is one week. This time includes attention to a large local business. If you run a boat through without doing local business a steamer could easily make two trips per week. The average time required for a shipment by rail from Mobile to Montgomery is fifteen hours, and the same from Montgomery to Mobile.

4th. Answering fourth cross. It is a fact that the Alabama River is navigable at certain seasons of the year only for light-draft
503 steamers. These seasons usually last from the 15th of September to the 15th of November; but there is no one season of the year when steamers can not make weekly trips and bring and take fair cargoes.

5th. Answering fifth cross. Up to 1886 a very large proportion of our goods came via the Alabama River, at which time the merchants of Montgomery organized a steamboat line between Montgomery and Mobile, and ran two steamers for two years. At the expiration of the two years the rates from the West by rail to Montgomery, on account of the steamers on the Alabama River, were reduced very much. Since that time a large proportion of our business has been received by rail. I can not state more definitely the proportion of my business received by rail and the proportion received by river. It is not practicable for *the* to state positively or more specifically the average of my total shipments per week, per month, and per year from said points west of Mobile to Montgomery, by all routes, during the time I was receiving such shipments by river via Mobile.

6th. Answering sixth cross. Our shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities have been exclusively by rail, owing to the fact that there has been a very unsettled condition of affairs with the railroads by which the rates have been unusually low on account of a rate war which has been in operation by all rail lines entering Montgomery. I can not be more specific than I have been in the statement of the average of my total shipments per week, per month, and per year from said cities to Montgomery, by all routes, during the time I was receiving such shipments by river.

7th. Answering seventh cross. At present a large amount of
504 local business to and from landings and intermediate points between Montgomery and Mobile is done by the steamers on the Alabama River, and this constitutes the bulk of the business now done by such steamers. The through business done at present by these steamers would not be sufficient to sustain them, but, if practically the entire business of Montgomery and Selma was given to these steamers at Mobile, and they should be given the difference in freight on shipments from the East and West to Mobile and Montgomery, it would be a very profitable business for persons now interested in the steamboat business on the Alabama River to largely increase their tonnage capacity and secure such business, and they would make a very handsome profit out of it annually. At this season of the year, when the cotton crop is moving, their through business is small in comparison with their local business, owing to the fact that the river being so low that they are unable to carry any through cotton from Montgomery, as they are compelled to handle local business as a matter of preference, and at paying a better rate.

9th. Answering ninth cross. The risk and insurance rates are higher on shipments by steamer than by rail from Mobile to Montgomery. The rate of insurance between Mobile and Montgomery is $\frac{3}{4}$ of 1 per cent. The railroad freight rates between these points include insurance, and I am unable to state what the rate of insurance would be.

10th. Answering tenth cross. At present there are four steamers running on the Alabama River: The steamer "Nettie Quill," tonnage capacity 400 tons; steamer "Carrier," tonnage capacity 200 tons; steamer "Tinsie Moore," tonnage capacity 200 tons; steamer "D. L. Tallie," tonnage capacity 400 tons. There is also one other steamer, not now in service on account of low water, the "Alto," tonnage capacity 400 tons. Each of these boats make weekly trips. I have no opportunity of knowing how many trains there are carrying freight daily from Montgomery to Mobile and from Mobile to Montgomery.

11th. Answering eleventh cross. At all points east of Troy and west of Bainbridge on the Alabama Midland Railway I am inclined to think that the merchants of Montgomery sell to the merchants along the line very largely of their western goods, except to Ozark and Brundidge. Coffee, sugar, and case goods in this territory are supplied largely from New York, Boston, Philadelphia, and other Eastern cities.

12th. Answering twelfth cross. As a matter of fact, in 1886 there was a greater discrepancy between all-rail rates to Montgomery and all-rail rates to Mobile. The merchants of Montgomery applied to the Southern Railway and Steamship Association for a reduction in these rates, which was denied them. They at once organized a company with \$35,000 capital, and bought two steamers of about 400 tons each, and placed them on the Alabama River in competition with the railroads. They did a flourishing business and made money until the rates were reduced to Montgomery to such a point as compared with Mobile that there was not margin enough to sustain these steamboats and they eventually quit the business after they had won their fight and forced the railroads to reduce their rates to Montgomery. Four years ago there was some talk among the railroad people of again advancing the rates slightly from the present rates. Our merchants here at once organized a company again and had built an elegant steamer, 200 tons capacity, and brought her to the Alabama River, where she now is, and has been running in the business for the past four years. This boat with four other boats on the river at present make a tonnage capacity of 1,790 tons. The fact of our having this tonnage capacity on the Alabama River, and being urged by the steamboat people to give them business, is the data upon which I base my estimate that the advance in rail rates, such as inquired about in the direct interrogatories, would have the effect of inducing shipments from New York and the Northeast by ocean to Mobile and thence by river to Montgomery, and in inducing shipments from Louisville, Cincinnati, and St. Louis to Mobile and thence by river to Montgomery. I also know that the question is now being agitated by parties with ample capital to establish a line of steamers between Boston and New York to Mobile direct. In 1886, when there was a steamship line between New York and Mobile, the rate through to Montgomery on first class was 55 cents a 100 against an all-rail rate of \$1.14. This being possible and highly probable, I can

not see why the rate should be higher than 55 cents through to Montgomery via the water route; that is, steamships from Boston and New York to Mobile, and by our line of steamers to Montgomery, which was the old rate established by the old steamship line in 1886. Should this company be established and the old rates reestablished, the rail lines would have to largely reduce their present rate or the business would go to Montgomery entirely by the water route.

507 *Answers of Leslie L. Gilbert to the direct and cross interrogatories propounded to him in the above-entitled cause.*

LESLIE L. GILBERT, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is Leslie L. Gilbert; residence, Montgomery, Alabama; my present occupation is secretary of the Commercial & Industrial Association of Montgomery; my former occupation was clerk in the law department of the L. & N. Railroad; age, 25 years.

2nd. Answering the 2nd direct interrogatory. I have been engaged in my present occupation for a period of four months.

3rd. Answering the 3rd direct interrogatory. Not being engaged in the mercantile business, I have not received any shipments by river at Montgomery which came from Mobile or points west of Mobile.

4th. Answering the 4th direct interrogatory. For the same reason given in my answer to the previous interrogatory. I have never received any shipments by river from Boston, New York, Philadelphia, Baltimore, or other Eastern cities, which came via Mobile.

5th. Answering the 5th direct interrogatory. I am not informed as to the number of steamboats now on the Alabama River; nor am I sufficiently informed to state the average time required for a boat to go from Montgomery to Mobile or from Mobile to Montgomery.

6th. Answering the 6th direct interrogatory. I am not informed and can not state how many months during the year the Alabama River is navigable for steamboats between Montgomery and Mobile.

7th. Answering the 7th direct interrogatory. The fact that the Alabama River is navigable by steamboats between Montgomery and Mobile has a tendency to make railroad rates between those cities lower.

8th. Answering the 8th direct interrogatory. I am not informed and therefore can not state whether the rates now charged by railroads between Montgomery and Mobile or higher or lower than they formerly were, and for that reason can not answer the remainder of said interrogatory.

9th. Answering the 9th direct interrogatory. If the rail rates from New York to Montgomery should be increased as specified in this interrogatory, if the matter of time was not material to the merchants at Montgomery, I should think the effect would be to increase the tonnage by the ocean and the Alabama River.

10th. Answering the 10th direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as specified in this interrogatory, I should think that, if the matter of time was not material, the effect would be to increase the traffic via Mississippi River to Mobile and the Alabama River to Montgomery.

11th. Answering the 11th direct interrogatory. If the rail rates on cotton intended for export and shipped from Montgomery to Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per 100 lbs, I should say that if the same shipping facilities were offered at Mobile by the steamship companies as is offered by the Atlantic ports to Liverpool, the tendency would be to increase the traffic by the Alabama River and the port at Mobile. This, however, would be regulated more particularly by the state of navigation of the Alabama River and by the service given at Mobile by the steamship lines.

12th. Answering the 12th direct interrogatory. Montgomery being situated on the Alabama River and being reached by 5 lines of railway possesses superior advantages in the way of shipping facilities to those of Troy, which I believe is reached by only two railroads and has no water route.

13th. Answering the 13th direct interrogatory. The number of bales of cotton received annually at Montgomery will reach the neighborhood of 125,000 bales.

14th. Answering the 14th cross. There are 5 independent systems of railway at Montgomery: The Louisville & Nashville system, the Plant system, the Central of Georgia system, the Savannah, Americus & Montgomery Railway system, the Western Railway of Alabama system.

15th. Answering the 15th direct interrogatory. I am not informed as the population of the town of Troy. There are two railroads running into that town: The Alabama Midland and the Central Railroad of Georgia. Troy has the connections of these two systems only. There is no water transportation to Troy. I am not informed and can not state how many wholesale or how retail merchants do business in Troy. I am not informed and cannot state how much cotton is received there annually. I do not know what manufacturing industries are located at Troy, nor what is their annual output. I can not state the total of the mercantile and manufacturing business done at Troy annually.

16th. Answering the 16th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. I did not in my direct examination state that I had received any shipments by river at Montgomery which came via Mobile from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

2nd. Answering the 2nd cross. I did not state in my direct examination that I had received shipments at Montgomery by river via Mobile from New York or other Northeastern cities, and for that reason can not further answer this cross-interrogatory.

509 3rd. Answering the 3rd cross. I am not informed and cannot state what is the average time required for a boat to go from Montgomery to Mobile or from Mobile to Montgomery. I am not informed and can not state, having never made any such shipments, how long a time is required for a shipment to go by rail from Montgomery to Mobile or from Mobile to Montgomery.

4th. Answering the 4th cross. I am not informed and therefore can not state whether the Alabama River is navigable at certain seasons of the year for light-draft steamers, or what are those seasons, or how long they last.

5th. Answering the 5th cross. As stated in my direct examination, I have not received any shipments which came to me by river at Montgomery from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

6th. Answering the 6th cross. As stated above, I have never received any shipments at Montgomery by river which came via Mobile from Boston, New York, or other Northeastern cities, and for that reason can not further answer this cross-interrogatory.

7th. Answering the 7th cross. I am not informed and can not state what is the distance by river from Montgomery to Mobile; the distance by rail is 180 miles.

8th. Answering the 8th cross. I am not informed and can not state whether a large amount of local business to and from landings intermediate between Montgomery and Mobile is done by steamers on the Alabama River, and whether this constitutes the bulk of the business done by said steamers. I am not informed and therefore can not state whether said steamers could maintain themselves on said through business done on said river, nor as to whether said local business is large in comparison with their through business.

9th. Answering the 9th cross. I can not state, for want of information, whether the risk is greater and the insurance rate higher on shipments by river than by rail from Montgomery to Mobile, nor what is the difference in such insurance.

10th. Answering the 10th cross. I am not informed, and therefore can not state, how often steamboats go from Montgomery to Mobile or from Mobile to Montgomery; not how many trains carrying freight there are per day between Montgomery and Mobile going either way.

11th. Answering the 11th cross. I am not a merchant, and therefore can not make further answer to this 11th cross-interrogatory.

12th. Answering the 12th cross. I have no data upon which I base my estimate of the effect of an advance in rail rates, such as is enquired about in the direct interrogatories, in inducing shipments from New York
510 and the northeast by ocean to Mobile and thence by river to Montgomery, or from Louisville, Cincinnati, and St. Louis to Mobile, and thence by river to Montgomery.

511 *Answers of Henry M. Hobbie to the direct and cross interrogatories propounded to him in the above-entitled cause.*

HENRY M. HOBBIÉ, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is Henry M. Hobbie; age, 45; residence, Montgomery, Ala.; occupation, wholesale grocer.

2nd. Answering the 2nd direct interrogatory. I have been engaged in this business for 26 years, but part of the time as an employee; I have been proprietor for about 20 years.

3rd. Answering the 3rd direct interrogatory. I have received shipments by river at Montgomery which came via Mobile from points west of

Mobile. These shipments consisted of large quantities of sugar, molasses, canned goods, etc., received from New Orleans. I now recall the fact of having purchased 50 hogsheads of sugar at one time, and having it shipped by water from New Orleans to Mobile and up the river to Montgomery, paying the insurance and saving no inconsiderable difference in freight as compared with the all-rail route. At various times in comparatively late years I have received large shipments of grain, flour, lard, and other Western produce from Cincinnati, St. Louis, and Louisville and other points in the West, all of which came via Mobile and thence to Montgomery by river. I am unable to state more specifically how often I have received such shipments, or what they amounted to, or when they were received.

4th. Answering the 4th direct interrogatory. I have received at Montgomery shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. On account of high rail rates in 1886, my firm began shipping all goods, such as coffee, sugar, syrup, bagging and ties, case goods, etc., coming from New York, Philadelphia, Boston, and other Eastern points via Mobile and from there to Montgomery by river. These shipments so received came every few weeks and continued for two (2) years, according to my best recollection. My house was doing a large business at the time these shipments were so received, but I am unable to state more specifically at this time what these shipments amounted to.

5th. Answering the 5th direct interrogatory. There are three regular steamboats running on the Alabama River between Montgomery and Mobile. In the fall and winter we have four regular steamers plying the river between these points. About one week is the average time required for a boat to go from Montgomery to Mobile and return.

6th. Answering the 6th direct interrogatory. The river is navigable for steamboats between Montgomery and Mobile all the year round, with the exception of a few weeks at a time when we have exceptionally dry weather.

7th. Answering the 7th direct interrogatory. The fact that the Alabama River is navigable for steamboats between Montgomery and Mobile has the effect of restraining railroads from exacting undue rates from us.

512 8th. Answering the 8th direct interrogatory. If the rail rates from New York to Montgomery should be increased as specified in the 8th direct interrogatory, the effect would be to force the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river.

9th. Answering the 9th direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as specified in the 9th direct interrogatory, the effect would be that the shipments from the points named would all go to Mobile and thence by steamboat from Mobile to Montgomery.

10th. Answering the 10th direct interrogatory. I can with safety answer that the circumstances and conditions effecting the transportation of traffic to and from Montgomery and those effecting the traffic to and from Troy are entirely dissimilar, the difference being very much in favor of Montgomery. If geographical position is to enter into the rate problem, then I unhesitatingly answer that Montgomery is far in advance of Troy. And this superiority of position is particularly emphasised by the fact that the

Alabama River, a stream navigable the year round, flows by her door, thus affording her a safe and never-failing waterway to enter into commercial relations, not only with Mexico, the Central and South Americas, but with the entire world. Again, Montgomery is the capital of the State, with a population of about thirty-five thousand, including her immediate suburbs. She has at her command five independent systems or trunk lines of railroads, radiating in seven directions, making her an important railroad centre. She has in the neighborhood of forty manufacturing establishments and industrial enterprises. Her cotton receipts run from one hundred and forty to one hundred and sixty-five thousand bales. Her commerce is estimated at about forty millions of dollars annually, and for general merchandise and live stock she is one of the finest distributing points in the South. Located in Montgomery are quite a number of large and influential wholesale houses, each employing the year round from two to five salesmen, reaching out into the territory of Alabama, Georgia, Florida, and Mississippi in the sale of groceries, dry goods, boots and shoes, etc. As much can not be said of Troy, whose trade is limited to only a few counties in this State, and whose population is only about one-ninth that of Montgomery, and Troy has no waterway of any character.

11th. Answering the 11th direct interrogatory. As stated in my answer to the 10th direct interrogatory, the population of Montgomery and its immediate suburbs is about 35,000.

12th. Answering the 12th direct interrogatory. There are five independent systems or trunk lines of railroads at Montgomery, as follows: The Louisville & Nashville, the Western Railway of Alabama, the Plant system, the Central Railroad of Georgia system, and the Savannah, Americus & Montgomery Railway.

13th. Answering the 13th direct interrogatory. There are in the neighborhood of 40 manufacturing and industrial enterprises in the city of Montgomery, employing about 2,700 hands.

513 14th. Answering the 14th direct interrogatory. There are from one hundred and forty to one hundred and sixty-five thousand bales of cotton handled annually at Montgomery.

15th. Answering the 15th direct interrogatory. The estimated annual value of the commerce of Montgomery, Ala., is about \$40,000,000.00.

16th. Answering the 16th direct interrogatory. The population of the town of Troy, Alabama, is about 4,000. There are two railroads running into that town, and it has the connections afforded by the Central System and the Plant System. There is no water transportation to Troy. I am not sufficiently informed to answer the number of wholesale or the number of retail merchants that do business in said town. I am unable to state how much cotton is received there annually. I am not sufficiently advised to state the number of manufacturing industries located there or what is their annual output, nor can I state the total of the mercantile business done there annually, nor of the manufacturing.

17th. Answering the 17th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, my examination, or the matters in question in this cause, further than to add, as a part of my answer to the 10th direct interrogatory, that there is a cotton factory in the city of Mont-

gomery, and two others near by, with their headquarters in the city, and that Montgomery is the residence of the various State and Federal officers, and numerous public buildings are located here. It also has three cotton compresses.

Cross-interrogatories:

1st. Answering the 1st cross. The shipments testified about by me in my answers to the direct interrogatories as having been received at Montgomery by river from points west of Mobile came from New Orleans, St. Louis, Louisville, and Cincinnati. These are the points which I now recall, and the shipments, consisted of sugar, molasses, canned goods, rice, flour, grain, lard, coffee, etc.

2nd. Answering the 2nd cross. The shipments testified about by me in my answers to the direct interrogatories as having been received by me at Montgomery by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, consisted of sugar, coffee, soda, potatoes, canned goods, and bagging and ties.

3rd. Answering the 3rd cross. The average time required for a boat to go from Mobile to Montgomery is $3\frac{1}{2}$ days, and the same to go from Montgomery to Mobile. The average time required for a shipment of freight by rail to go from Mobile to Montgomery or from Montgomery to Mobile is one day.

4th. Answering the 4th cross. The Alabama River is navigable at certain seasons of the year only for light-draft vessels. These seasons are usually in the fall of the year and last from four to six weeks.

514 5th. Answering the 5th cross. At this time all shipments from Louisville, Cincinnati, St. Louis, and New Orleans come to me at Montgomery by rail routes. We are now making no shipments by river via Mobile. At the time mentioned in my answers to the direct interrogatories, much the larger proportion of such shipments came via Mobile, and by river to Montgomery, very few shipments being made to us at that time by rail from the West. I am not prepared to state what was the average of my total shipments per week, per month, and per year from said Western points to Montgomery by all routes during the time I was receiving said shipments by river via Mobile.

6th. Answering the 6th cross. All of my shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities come to me at this time to Montgomery by other routes than by river via Mobile. Said shipments usually come via Savannah or Norfolk. It is not possible for me to state at this time what was the average of my total shipments per week, per month, or per year from said Eastern cities to Montgomery by all routes during the time I was receiving said shipments by river, as stated in my answers to the direct interrogatories.

7th. Answering the 7th cross. The distance by river between Mobile and Montgomery, according to my best recollection, is between 350 and 400 miles, and the distance between said cities by rail is 180 miles.

8th. Answering the 8th cross. Within the past few years the business to and from landings intermediate between Mobile and Montgomery may have exceeded the through business, but Mobile is fast forging her way to the front as a port of entry for large vessels; in fact, a line of Liverpool steamers have already been established to transport cotton and other commodities from Mobile to European cities. Already one line of steamers is

offering to transport cotton from Montgomery to Mobile at 65 cents per bale, including insurance. This is a saving of about 85 cents per bale as compared with the rail route. There is considerable local business to and from landings between Mobile and Montgomery, and it does constitute at present the larger proportion of the business done by boats on the Alabama River. The through business now done by said boats would not be sufficient to maintain them. The through business now done is small in comparison with the local business done by said boats.

9th. Answering the 9th cross. The risk is greater and the insurance rate higher on shipments by steamer than by rail between Mobile and Montgomery. The difference in the insurance by river and by rail on shipments between Montgomery and Mobile is the amount of the insurance on shipments by river, there being no insurance on shipments by rail. This insurance, according to my best recollection, amounts to from $\frac{1}{4}$ to $\frac{3}{8}$ of 1%.

10th. Answering the 10th cross. Steamboats go from Montgomery to Mobile and from Mobile to Montgomery about two or three times a week. I am not able to state how many trains carrying freight there are per day from Montgomery to Mobile or from Mobile to Montgomery.

11th. Answering the 11th cross. The merchants of Montgomery, including myself, can and do sell goods at Brundidge, Ozark, and Dothan, stations and towns east of Troy on the Alabama Midland Railway.

12th. Answering the 12th cross. In 1886 the rail rates were increased, and because of such increase the merchants of Montgomery established a line of boats on the Alabama River, between Montgomery and Mobile, and continued them in operation until the rail rates were reduced to a satisfactory basis. From this instance, and from my business observation and experience, I base my opinion that the effect of such an advance in rail rates as is specified in the direct interrogatories would result in changing shipments from rail routes to water routes via Mobile to Montgomery.

516 *Answers of E. B. Joseph to the direct and cross interrogatories propounded to him in the above-stated cause.*

E. B. JOSEPH, being duly sworn, deposes and says :

1st. Answering the 1st direct interrogatory. My name is Edwin B. Joseph ; age 42 ; residence, Montgomery ; occupation, president of insurance company.

2nd. Answering the 2nd direct interrogatory. I have been engaged in my present occupation about 17 years.

3rd. Answering the 3rd direct interrogatory. I have never received any shipments at Montgomery which came via Mobile from points west of Mobile, and for that reason can not further answer this interrogatory.

4th. Answering the 4th direct interrogatory. I have never received at Montgomery any shipments by river which came from or via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities, and for this reason can not further answer this interrogatory.

5th. Answering the 5th direct interrogatory. I am not sufficiently informed to state definitely how many steamboats are now running on the Alabama River between Montgomery and Mobile, but from general infor-

mation I state that there are three. Nor am I sufficiently informed to state the average time required for a boat to go from Montgomery to Mobile and return.

6th. Answering the 6th direct interrogatory. I am not sufficiently familiar with the subject to state how many months during the year the Alabama River is navigable for steamboats between Montgomery and Mobile.

7th. Answering the 7th direct interrogatory. I am not at all familiar with the subject inquired about in this interrogatory, and therefore can not undertake to state what effect, if any, the fact that the Alabama River is navigable for steamboats between Montgomery and Mobile has upon rates charged by railroads between those cities.

8th. Answering the 8th direct interrogatory. I am not sufficiently informed, not being engaged in the mercantile business, and therefore having no experience in the matter, to state whether the rates now charged by railroads between Montgomery and Mobile are higher or lower than they formerly were, and am unable to further answer this interrogatory.

9th. Answering the 9th direct interrogatory. I am not sufficiently informed to state what the effect of the supposed increase of rail rates from New York to Mobile, as specified in this interrogatory, would have towards inducing the shipment of such freight from New York to Mobile by ocean and thence by river to Montgomery.

10th. Answering the 10th direct interrogatory. I am not sufficiently informed, and have not the practical experience to state what effect
517 the supposed increase of rail rates from Louisville, Cincinnati, and St. Louis to Montgomery, would have towards inducing the shipment of freights from those points by river to Mobile and thence by steamboat to Montgomery.

11th. Answering the 11th direct interrogatory. Having no practical knowledge of the subject, I can not undertake to answer what *would* the effect would be in the event of the supposed increased rail rates on cotton intended for export and shipped from Montgomery to Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, towards inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports, or by vessel to European ports.

12th. Answering the 12th direct interrogatory. I am unable to state what difference, if any, exists between the circumstances and conditions effecting the transportation of traffic to and from Montgomery and to and from Troy, having no familiarity with the details of this subject.

13th. Answering the 13th direct interrogatory. Answering from information derived from the newspapers and trade reports, I state that there are about 135,000 bales of cotton handled at Montgomery annually.

14th. Answering the 14th direct interrogatory. There are the following independent trunk lines of railway at Montgomery: Plant system, the Louisville and Nashville, Georgia Central, Western of Alabama, the Savannah, Americus & Montgomery Railway.

15th. Answering the 15th direct interrogatory. I do not know the population of Troy. There are two railroads running into that town—the Mobile and Girard and the Alabama Midland. Through these railroads Troy has all the connections with points on the Plant system and the Central of Georgia system. There is no water transportation to Troy. I am not informed and therefore can not state how many wholesale or how

many retail merchants do business in that town, and for the same reason can not further answer this interrogatory.

16th. Answering the 16th direct interrogatory. I do not know and can not set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories :

1st. Answering the 1st cross. I did not state in my direct examination that I had received shipments at Montgomery by river from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

2nd. Answering the 2nd cross. I did not state in my direct examination that I had received shipments by river at Montgomery which came from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, and for this reason can not further answer this cross-interrogatory.

518 3rd. Answering the 3rd cross. I am not informed and therefore can not state the average time required for a boat to go from Montgomery to Mobile or from Mobile to Montgomery, nor can I state the average time required for a shipment to go from Montgomery to Mobile or from Mobile to Montgomery by rail.

4th. Answering the 4th cross. I answer, from general information, that the Alabama River is navigable at certain seasons of the year only, for light-draft steamers. I can not state what these seasons are or how long they last.

5th. Answering the 5th cross. I stated in my direct examination that I had not received shipments of freight from points west of Mobile which came to me by river via Mobile, and for that reason I can not further answer this cross-interrogatory.

6th. Answering the 6th cross. As stated in my answer to the direct interrogatories, I have received no shipments from Boston, New York, Philadelphia, Baltimore, or other Eastern cities which came to me at Montgomery by river via Mobile, and for that reason I can not further answer this cross-interrogatory.

7th. Answering the 7th cross. I do not now recall the distance by river from Montgomery to Mobile; the distance by rail is 180 miles.

8th. Answering the 8th cross. I am not informed and therefore can not state whether a large amount of local business to and from landings intermediate between Montgomery and Mobile is done by steamers on the Alabama River or whether this constitutes a bulk of the business done by said steamers, nor am I able to state whether said steamers could maintain themselves by the through business done on said river. Speaking from general information, I state that their through business is small in comparison with their local.

9th. Answering the 9th cross. The risk is greater and the insurance rate higher on shipments by steamer than by rail between Montgomery and Mobile. The river rate is $\frac{1}{2}$ of 1 %. The amount of insurance on shipments by rail would depend a great deal upon the form of the through bill of lading. The rail rate would vary from an eighth to a quarter.

10th. Answering the 10th cross. I have no special knowledge as to how often boats go from Montgomery to Mobile or from Mobile to Montgomery, and therefore can not speak accurately upon this subject, nor am I sufficiently informed on the subject to state how many trains carrying freight there are per day between Montgomery and Mobile or Mobile to Montgomery.

11th. Answering the 11th cross. Not being a merchant, I can not answer the 11th cross-interrogatory.

519 12th. Answering the 12th cross. I did not give any estimate in my direct examination as to the effect of an advance in rail rates, such as is inquired about in the direct interrogatories, in inducing shipments from New York and the Northeast by ocean to Mobile and thence by river to Montgomery, or by water from Louisville, Cincinnati, and St. Louis to Mobile, and thence by river to Montgomery, and have no data upon which to base any estimate.

520 *Answers of J. H. Clisby to the direct and cross interrogatories propounded to him in the above-stated cause.*

J. H. CLISBY, being duly sworn, deposes and says :

1st. Answering the 1st direct interrogatory. My name is John H. Clisby ; age, 50 ; residence, Montgomery, Alabama ; occupation, cotton buyer.

2nd. Answering the 2nd direct interrogatory. I have been engaged in my present occupation for 20 years.

3rd. Answering the 3rd direct interrogatory. I have never received any shipments by river at Montgomery which came via Mobile from points west of Mobile, and for that reason can not further answer this interrogatory.

4th. Answering the 4th direct interrogatory. I have never received at Montgomery any shipments by river which came from Boston, New York, Philadelphia, Baltimore, or other Eastern cities.

5th. Answering the 5th direct interrogatory. There has been two steamboats running on the Alabama River between Montgomery and Mobile, but I do not know whether they are prevented from running now or not by low water. The average time required for a boat to go from Montgomery to Mobile and return is about 5 days.

6th. Answering the 6th direct interrogatory. I can not state how many months during the year the river is navigable by steamboats between Montgomery and Mobile, but it is navigable all the time, except during a severe drouth.

7th. Answering the 7th direct interrogatory. The fact that the Alabama River is navigable for steamboats between Montgomery and Mobile has the effect of enabling shippers to send their freight by river at low rates, and of keeping down the rates charged by railroads between those cities.

8th. Answering the 8th direct interrogatory. Not being engaged in the mercantile business, I am not able to state whether the rates now charged by railroads between Montgomery and Mobile are higher or lower than they formerly were, or when the various reductions, if any, were made, or what were the causes of those reductions, if any.

9th. Answering the 9th direct interrogatory. My business not being of the character to give me experience in the matter of rates enquired about in the 9th interrogatory, I am unable to answer the same.

10th. Answering the 10th direct interrogatory. For the same reason given in my answer to the 9th direct interrogatory, I am unable to answer the 10th direct interrogatory.

11th. Answering the 11th direct interrogatory. If the rail rates on cotton intended for export, and shipped from Montgomery to Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per 100 pounds, the effect would be to turn the shipment of cotton from Montgomery to Mobile by river for direct export from Mobile to European ports.

12th. Answering the 12th direct interrogatory. The difference existing between the circumstances and conditions effecting the transportation of traffic to and from Montgomery and to and from Troy, are that Montgomery has 6 competing railroads and a navigable river, and Troy has no waterway and only two railroads, and from information I will state that the Central Railroad controls all the cotton shipped from Troy.

13th. Answering the 13th direct interrogatory. There is an average of 120 thousand bales of cotton handled at Montgomery annually.

14th. Answering the 14th direct interrogatory. There are the following trunk lines at Montgomery: The Louisville & Nashville, the Central, the Plant System. There are two steamboat lines on the Alabama River between Montgomery and Mobile.

15th. Answering the 15th cross. I can not state of my own knowledge the population of the town of Troy, but I state on information that it is between four and five thousand. There are two railroads running to that town. Troy has the railroad connections of the Plant and Central systems. There is no water transportation to Troy. I am not sufficiently informed to state how many wholesale and how many retail merchants do business in said town. There are between 30 and 50 thousand baled of cotton received at Troy annually. I am not able to state the manufacturing industries at Troy or their annual output, nor am I sufficiently informed to state the total of the mercantile or manufacturing business done there annually.

16th. Answering the 16th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. I did not in my direct examination state that I had received any shipments at Montgomery by river from points west of Mobile, and for that reason can not further answer this cross-interrogatory.

2nd. Answering the 2nd cross. I did not in my direct examination state that I had received shipments at Montgomery by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, and for that reason can not further answer this cross-interrogatory.

3rd. Answering the 3rd cross. It requires from two to three days for a boat to go from Mobile to Montgomery and about 50 to go from Montgomery to Mobile. It requires about 12 hours for a train of cotton to go from Montgomery to Mobile and about the same time from Mobile to Montgomery.

522 4th. Answering the 4th cross. In summer time the Alabama River is navigable by light-draft steamers only. These seasons last during July, August, September, and October.

5th. Answering the 5th cross. I did not state in my direct examination that I had received any shipments from points west of Mobile which came to me at Montgomery by river, and for that reason I can not further answer this cross-interrogatory.

6th. Answering the 6th cross-interrogatory. I did not state in my direct examination that I had received any shipments at Montgomery by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities, and for that reason I can not further answer this cross-interrogatory.

7th. Answering the 7th cross. The distance by rail is 204 miles from Montgomery to Mobile, and by river it is 400 miles.

8th. Answering the 8th cross. There is a large amount of local business to and from landings intermediate between Montgomery and Mobile, and this local business constitutes the greater part of the business done by these boats. Said steamboats could not maintain themselves on the through business done on said river. Their through business is small in comparison with their local business.

9th. Answering the 9th cross. The risk is greater and insurance higher on shipments by river than by rail between Montgomery and Mobile. The difference in insurance on shipments of cotton by river and by rail is about $\frac{3}{4}$ of 1 % greater by river.

10th. Answering the 10th cross. Steamboats go from Montgomery to Mobile and from Mobile to Montgomery once a week each way. A large number of trains carrying freight, especially during the cotton season, go from Montgomery to Mobile and from Mobile to Montgomery, but I am unable to state the number.

11th. Answering the 11th cross. Not being engaged in the mercantile business, I am unable to answer said 11th cross-interrogatory.

12th. Answering the 12th cross. The only data I now recall upon which I based my estimate of the effect of an advance in rail rates, such as is enquired about in the direct interrogatories, in inducing from New York and the Northeast by ocean to Mobile, and thence by river to Montgomery, and from Louisville, Cincinnati, St. Louis, and other Western points by river to Mobile, and thence by river to Montgomery, is that during the cotton season of last year, on account of an increase in rates by rail to Atlantic ports on cotton, a large amount of cotton was shipped from this place to Mobile by river for export. I do not at this time recall any data showing what would be the effect of such increase
523 in rates upon shipments from New York and the Northeast by ocean to Mobile and thence by river to Montgomery.

524 *Answers of A. M. Baldwin to the direct and cross interrogatories propounded to him in the above-entitled cause.*

A. M. BALDWIN, being duly sworn, deposes and says: *

1st. Answering the 1st direct interrogatory. My name is A. M. Baldwin; age, 34 years; residence, Montgomery; occupation, cashier of the First National Bank.

2nd. Answering the 2nd direct interrogatory. I have been engaged in my present occupation since 1886.

3rd. Answering the 3rd direct interrogatory. I have received no shipments at Montgomery which came by river via Mobile from points west of Mobile.

4th. Answering the 4th direct interrogatory. I have received no shipments at Montgomery by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities.

5th. Answering the 5th direct interrogatory. I can not state positively from my own knowledge how many steamboats are now running on the Alabama River between Montgomery and Mobile, but from my general knowledge and observation I think there are only two. I do not know the average time required for a boat to go from Montgomery to Mobile and return.

6th. Answering the 6th direct interrogatory. I am unable to state how many months during the year the Alabama River is navigable for steamboats between Montgomery and Mobile.

7th. Answering the 7th direct interrogatory. I am not sufficiently informed on the subject to state what effect, if any, the fact that the Alabama River is navigable between Montgomery and Mobile has upon the railroad rates between those places.

8th. Answering the 8th direct interrogatory. My business not being of a mercantile nature, I am not informed as to the rates now charged by railroads between Montgomery and Mobile, and therefore can not state whether they are higher or lower than they formerly were, and when the reductions, if any, were made, or the causes of those reductions.

9th. Answering the 9th direct interrogatory. For the same reason stated above I am unable to answer the 9th direct interrogatory.

10th. Answering the 10th direct interrogatory. For the same reason I am unable to answer the 10th interrogatory.

11th. Answering the 11th direct interrogatory. Not being engaged in the shipment of cotton, and only indirectly interested in that business, I do not feel that I am sufficiently informed to attempt an answer to the 11th direct interrogatory, and therefore do not answer the same.

525 12th. Answering the 12th direct interrogatory. I am not sufficiently informed to make an answer to the 12th interrogatory.

13th. Answering the 13th direct interrogatory. There are from 140 to 175 thousand bales of cotton handled in Montgomery annually.

14th. Answering the 14th direct interrogatory. There are four independent trunk lines or systems of railway at Montgomery, as follows: The Louisville and Nashville, the Western of Alabama, the Alabama Midland, the Central of Georgia.

15th. Answering the 15th direct interrogatory. I am not informed as to the population of the town of Troy. I think there are two railroads

running to that point: Central of Georgia and the Alabama Midland, and Troy has the connections afforded by these two railroads; I can not specify more particularly. There is no water transportation to Troy. I do not know the number of wholesale or retail merchants in the town of Troy. I can not answer how much cotton is received in Troy annually. I am not informed and can not state what manufacturing or industrial enterprises are located there, nor their annual output. I am not informed and can not state the total of the mercantile business done there annually, nor of the manufacturing enterprises.

16th. Answering the 16th direct interrogatory. I do not know nor can I set forth any other matter or thing which may be a benefit or advantage to the parties to this cause or either of them, or that may be material to the subject of this my examination or the matter in question in this case.

Cross-interrogatories:

1st. Answering the 1st cross. I did not state in my direct examination that I had received shipments by river at Montgomery from points west of Mobile, and for that reason I can not answer the remainder of said first cross-interrogatory.

2nd. Answering the 2nd cross. I did not state in my direct examination that I had received shipment by river at Montgomery which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, and for that reason I can not answer the remainder of this 2nd cross.

3rd. Answering the 3rd cross. I am not sufficiently informed, and therefore can not state what is the average time required for a boat to go from Montgomery to Mobile or from Mobile to Montgomery, nor the average time required for a shipment by rail between these cities in either direction.

4th. Answering the 4th cross. I only know from general knowledge that the Alabama River is navigable at certain seasons of the year only for light draft steamers, but I can not give any particulars as to these seasons, or how long they last.

526 5th. Answering the 5th cross. I did not state in my direct examination that I had received shipments from points west of Mobile which came to me at Montgomery by river, or by rail or otherwise, and for that reason I can not answer the remainder of said 5th cross-interrogatory.

6th. Answering the 6th cross. I did not state in my direct examination that I had received shipments by river at Montgomery which came to me via Mobile from Boston, New York, Philadelphia, Baltimore, or other Eastern cities, or by rail or otherwise, and therefore can not answer the remainder of this 6th cross-interrogatory.

7th. Answering the 7th cross. I do not know the distance by river from Montgomery to Mobile, but the distance by rail is 182 or 183 miles.

8th. Answering the 8th cross. I am not sufficiently informed to state whether or not a large amount of local business to and from landings between Montgomery and Mobile is done by steamers on the Alabama River, and whether or not it constitutes the bulk of the business done by said steamers. Nor am I sufficiently informed to state whether or not said steamers could maintain themselves on the through business done by

them on said river. Nor do I know how their through business compares with their local business.

9th. Answering the 9th cross. I am not informed as to whether the risk is greater and the insurance higher on shipments by steamer than by rail to Mobile, or the amount of such difference, if any.

10th. Answering the 10th cross. I do not know definitely, but I think steamers go from Montgomery to Mobile and from Mobile to Montgomery twice a week. I am not sufficiently informed to state how many trains carrying freight between those points run per day in either direction.

11th. Answering the 11th cross. I am not engaged in the mercantile business, and for that reason can not answer the 11th cross-interrogatory.

12th. Answering the 12th cross. I did not in my direct examination give any estimate as to what effect an advance in rail rates such as inquired about in said direct interrogatories, and therefore can not further answer this 12th cross-interrogatory.

527 *Answer of J. W. Tullis to the original and cross interrogatories propounded to him in the above-entitled cause.*

J. W. TULLIS, being first duly sworn, deposes and says :

1st. Answering the first direct interrogatory. My name is John W. Tullis; my age is 55 years; residence, Eufaula, Alabama; occupation, cotton buyer and shipper.

2nd. Answering the second direct interrogatory. I have been engaged in my present occupation in Eufaula since 1866.

3rd. Answering the third direct interrogatory. I have shipped cotton by river from Eufaula to Apalachicola. From 1867 to 1876 I made shipments of cotton from Eufaula to Apalachicola by river every cotton season, amounting to several hundred bales every season, this being as fully as I can now state the amount of such shipments. Since 1876 little, if any, cotton shipped by me from Eufaula by river has actually gone to or through Apalachicola, but was taken up by the railroads before reaching that point. I will also state that Apalachicola was not the final point of destination for any cotton shipped by me either prior of after 1876, but was simply one of the points through which such shipments passed. Shipments made by me by river which did not reach Apalachicola, but were taken up by railroads before reaching that point, were much larger than those which were made through that point. In one season I made a shipment of cotton by river, which were taken up by railroads before reaching Apalachicola, which amounted to some ten thousand bales. In other seasons I also made shipments by river amounting to several thousand bales.

4th. Answering the fourth direct interrogatory. I can not state positively how many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola, but I am certain that there is one running between these points three times a week. It is about two hundred miles from Eufaula to Apalachicola by river, and the average time required for a boat to go from Eufaula to Apalachicola and return is from four to five days.

5th. Answering the fifth direct interrogatory. The Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola at all times

during the year. Of course the stage of water varies at times, but the river is always navigable.

6th. Answering the sixth direct interrogatory. The fact that the river is navigable between Eufaula and Apalachicola, make the rates on the railroads between Eufaula and Mobile lower, and the effect is the same as between Eufaula and New Orleans, and between Eufaula and New York and other Northeastern cities.

7th. Answering the seventh direct interrogatory. In the event 528 the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds and other freights in proportion, the effect would be that all shipments of cotton and other freights from Eufaula to New Orleans would go by the Chattahoochee River through Apalachicola.

8th. Answering the eighth direct interrogatory. The difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula and those to and from Troy is as follows: In the first place, Eufaula is located upon a navigable river, while Troy is situated on no river at all. If there were no railroads to Eufaula, it could get all of the goods that come to it by river, and could ship every bale of cotton or goods by river, while Troy would have to wagon hers either to Montgomery, Columbus, or Eufaula before it could make shipments, if she had no railroads. The following railroads enter Eufaula: South Western Railroad, connecting at Macon, Georgia, with its different systems; the Montgomery & Eufaula, connecting at Montgomery with her different systems; the Eufaula & Ozark, connecting with the Midland at Ozark; while Troy has only the following railroads: The Mobile & Girard and the Alabama Midland. In addition to the railroads entering Eufaula, the Savannah, Americus & Montgomery Railroad comes within 18 miles of us, and is accessible by wagon roads passable all the year round; the Abbeville Southern is only 25 miles from Eufaula, and is also accessible by wagon roads passable all the year round. And in addition to the river connections above mentioned with the Alabama Midland and the whole Plant system, she has also river connection with the Florida & Peninsular and the Louisville & Nashville and the Columbus Southern. Therefore if Eufaula had no railroad running into the city it would have ample and competitive communication with railroads through its river route.

9th. Answering the ninth direct interrogatory. I have already stated every material matter which would be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to my examination or the matters in question in this cause

Cross-interrogatories:

1st. Answering first cross. I have not stated in my direct examination that I have received at Eufaula any shipments of goods by river via Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, for the reason that no such direct interrogatory is propounded to me; and I further state that I am not, nor have I been, engaged in merchandizing, and consequently have never made or received shipments of merchandise to or from Apalachicola to or from Eufaula.

2nd. Answering second cross. I am unable to further answer this interrogatory than I have already answered the first cross, not being engaged in any business requiring such shipments of merchandise.

3rd. Answering third cross. As my answer to this third cross, I adopt the answer already made to the first and second crosses.

529 4th. Answering the fourth cross. I adopt as my answer hereto the answer already made to the 1st and second cross.

5th. Answering the fifth cross. I adopt as my answer hereto the answer already made to the first and second cross.

6th. Answering the sixth cross. Not being engaged in merchandising or shipping, or receiving shipments of merchandise, I do not feel that I am sufficiently informed to answer this cross-interrogatory.

7th. Answering the seventh cross. In answer to this cross-interrogatory I adopt as my answer hereto the answer before made to the sixth cross-interrogatory.

8th. Answering eighth cross. I adopt as my answer to this cross-interrogatory the answer I have already made to the sixth cross as to merchandise shipments; I shall give no opinion as to the time required for shipments of cotton from points designated in this interrogatory to Eufaula, for the reason that cotton is not shipped from such points to Eufaula.

9th. Answering the ninth cross. I am not sufficiently informed as to the matters enquired about in this interrogatory to make answer thereto.

10th. Answering the tenth cross. Apalachicola is situated on the Gulf Coast, and, according to my information, a shipment by water from New York and Northeastern cities would have to pass around Florida Keys and the extreme southern point of the peninsular of Florida in order to reach Apalachicola.

11th. Answering the eleventh cross. The distance by water from Eufaula to Apalachicola is about 200 miles. I am not informed as to the distance to Apalachicola by water from Mobile or New Orleans, or from New York, Boston, Philadelphia, Baltimore, or the Northeastern cities, around the Florida Keys.

12th. Answering twelfth cross. Boats run from Eufaula to Apalachicola at least three times a week and these boats make Columbus and Apalachicola their terminal points, passing through Eufaula on such trips. I have no information as to how often boats run from Apalachicola to Mobile or to New Orleans or to Northeastern cities. Boats arrive at Eufaula from Apalachicola on their way to Columbus at least three times a week.

13th. Answering thirteenth cross. I have not in my direct examination stated that I have ever shipped other goods than cotton by river to Apalachicola or by water through Apalachicola to Mobile or New Orleans, and as I am not and have not been engaged in merchandising, I can not make further answer hereto so far as the same refers to goods and merchandise.

530 14th. Answering the fourteenth cross. I have made no shipments of goods and merchandise from Eufaula via river to Apalachicola, but have testified only as to shipments of cotton made by me by river from Eufaula to Apalachicola, and that has been the usual route for such shipments of cotton to Mobile and New Orleans before the railroads were completed, and since the construction of the railroads it was the usual route until the railroads furnished rates not greater than the water route

rates, in which case these shipments are usually made by rail. I am not able to state definitely what proportion of all the shipments made by me of cotton from Eufaula to Mobile and New Orleans was made by river via Apalachicola, but can only say that very little of the cotton shipped by me from Eufaula to Mobile and New Orleans has gone by water since the Montgomery & Eufaula Railroad was constructed (the year I can not now recall), for the reason that we have been able since that time to procure the same rate from the railroads that we would have had to pay by the river route. I do not now make any shipments of cotton from Eufaula by river via Apalachicola to Mobile or New Orleans or by any other route or routes. The cotton from this territory all goes East, either for New England or Northern Canadian spinners or for export to Europe, and this has been the case for the last two or three years.

15th. Answering the fifteenth cross. My information in regard to the questions embraced in this interrogatory is limited to the fact that Galveston steamers will stop at Apalachicola (but whether within or outside of the harbor I can not state) and take cotton for shipment to the North and East. I can not answer this interrogatory further.

16th. Answering the sixteenth cross. I can get a through bill of lading on shipments of cotton from Eufaula by river via Apalachicola to Mobile or New Orleans, but I can not speak as to foreign ports. Such through bill of lading can be negotiated with the banks. I can not count with as great certainty that such shipments would reach Mobile or New Orleans in time to take such ocean steamer I may have engaged, as I could if such shipments were made by rail, but I will state that they can be counted on with reasonable certainty.

17th. Answering seventeenth cross. There is an extra river insurance on cotton from Eufaula to Apalachicola and from Apalachicola to Mobile and New Orleans. The amount of this extra insurance is one-quarter of one per cent greater on cotton by river than by rail.

18th. Answering the eighteenth cross. I can not say that the law requires extra bagging to be put on the cotton shipped by river, but it does require that the bale shall be entirely covered with bagging. The bagging usually on a bale of cotton will entirely cover it after it has been compressed. The shipper is required to put this extra bagging on cotton shipped by river from Eufaula if it is not compressed, but the increase in weight thereby given to the bale covers the expense of putting on this extra bagging.

531 19th. Answering the nineteenth cross. Shipments around Florida Keys are regarded as extra hazardous and does increase the rate of insurance.

20th. Answering twentieth cross. The Eufaula banks do not make a difference in discounting drafts where cotton is shipped by river.

21st. Answering the twenty-first cross. The rules recently adopted by the Liverpool Cotton Association do not call for the rejection of cotton having this extra bagging required on shipments by river.

22nd. Answering the twenty-second cross. About five years ago I had about 500 bales burned at the mouth of the Flint River which had been shipped by boat from Eufaula. When the same was replaced we shipped it by railroad because they gave us a rate which was satisfactory. About four years ago we sent about ten thousand bales down the river. Before

the season was over we stopped that class of shipments down the river and sent them by railroad because the railroads made rates satisfactory. We shipped once about 2,000 bales of cotton at about one-half the usual rate by rail because the river offered to take it for that rate. This occurred about seven or eight years ago. In my opinion this water competition actually controls and fixes the rail rates all the time.

532 *Answer' of John O. Martin to the direct and cross interrogatories propounded to him in the above entitled cause.*

JOHN O. MARTIN, being duly sworn, deposes and says:

1st. Answering the first direct interrogatory. My name is John O. Martin; age, 60; residence, Eufaula, Ala.; occupation, commission broker.

2nd. Answering the second direct interrogatory. I have been engaged in my present occupation since 1876.

3rd. Answering the third direct interrogatory. I have never shipped in cotton or other goods by river from Eufaula to Apalachicola in my own business. From 1866 to 1876, I was owner of the wharf at Eufaula, and agent for the steamboats, and made frequent shipments of cotton and other goods for others from Eufaula to Apalachicola. Boats were then running three times a week between Eufaula and Apalachicola, and I made shipments by every boat. These shipments were large, as all goods that were shipped from or to Eufaula came by that route.

4th. Answering the fourth direct interrogatory. During this same period, from 1866 to 1867, and as such agent, and also as shipper, I received numerous shipments of goods at Eufaula, which came via Apalachicola from Mobile and New Orleans. The shipments so received were frequent, and consisted of all the Western products shipped to Eufaula and adjacent territory, in the years immediately succeeding the war.

5th. Answering the fifth direct interrogatory. From the close of the war up to about 1872, while I was such wharf owner and agent for the boats, there were frequent and continuous shipments of goods, which came via Apalachicola, and by river to Eufaula, from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. All Eastern shipments came to Eufaula in that way from about 1865 to 1867 or 1868. These shipments were also frequent, but I am unable to specify more definitely the amount.

6th. Answering the sixth direct interrogatory. There are five boats now running on the Chattahoochee River between Eufaula and Apalachicola, but only three making regular trips. The average time required for a boat to go from Eufaula to Apalachicola and return is about 50 hours.

7th. Answering the seventh direct interrogatory. The Chattahoochee River is navigable by steamboats between Eufaula and Apalachicola every month during the year.

8th. Answering the eighth direct interrogatory. The fact that the Chattahoochee River is navigable by steamboats between Eufaula and Apalachicola has a menacing effect upon the railroads centering at

Eufaula, inasmuch as it gives us railroad connection at Chattahoochee with two railroads from west and east, and at Bainbridge, Georgia, with the Flint River, which is also navigable during the season, and at Gordon, Alabama, to the river. The Plant system of rail-

roads owns a distinct line of steamboats on this river, competing with the line owned by the Central system. There has been during the last few years a boat running one-half the time as an independent boat; consequently, it keeps the rate of freight lower than the nominal rate.

9th. Answering the ninth direct interrogatory. If the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, the effect, in my opinion, would be that a boat or line of boats would be at once placed in the river for carrying cotton and other freights by river to Apalachicola, or Pensacola, and thence by vessel to New Orleans.

10th. Answering the tenth direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Eufaula were permanently increased as specified in this interrogatory, the effect of such increase would be that shipments of freight would be made by boats upon the Ohio and Mississippi rivers from these points to New Orleans, thence by vessel to Apalachicola and by steamboat to Eufaula. And if the present line of boats on the Chattahoochee and Apalachicola rivers would not be sufficient, or would not accept rates for carrying freights with the other water lines, other boats would at once be put upon these last-named rivers.

11th. Answering the eleventh direct interrogatory. The difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula and to and from Troy is this: The open navigable Chattahoochee and Apalachicola rivers open up to Eufaula three railroad systems independent of those we have at Eufaula, making Eufaula a strong competitive point, while Troy is an inland town having no facilities for an outlet except by rail; as evidence of this I received at Eufaula and delivered freight to Troy, Brundidge, and all points equally distant.

12th. Answering the twelfth direct interrogatory. The only competing lines of carriers at Eufaula are the railroads and the river, the railroads being under one control and management, and being as follows: The Central, the M. & E., and the E. & O. The water line is the Chattahoochee River, extending to Chattahoochee, and then the Apalachicola River, from Chattahoochee to Apalachicola, which opens up to four railroads.

13th. Answering the thirteenth direct interrogatory. There is one line of rail transportation from Eufaula to the Atlantic seaboard, that is the Central Railroad, running to all points on the Atlantic Coast, and also the river line of transportation to Savannah, Brunswick, and Fernandino.

14th. Answering the fourteenth direct interrogatory. The population of Eufaula and its suburbs is about 6,000.

15th. Answering the fifteenth direct interrogatory. There are the following manufacturies at Eufaula, viz: Eufaula Cotton Mills; 534 Chewalla Cotton Mills, which are just about being completed and the machinery placed in; Eufaula Oil Mills; the sash, door, and blind manufactory; two carriage manufacturies; grist mill just outside of the corporate limits; gas works; electric-light works—all together having about 600 or 700 employees.

16th. Answering the sixteenth direct interrogatory. It is a fact well and fully demonstrated that water routes can be made much lower than all rail routes, and it has also been demonstrated that Eufaula has an excellent navigable river at all periods of the year which inland towns do not have.

Cross-interrogatories:

1st. In answer to the first cross. The shipments of goods by the Chattahoochee River via Apalachicola from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, to Eufaula, about which I testified in my direct examination, consisted of all manner of general merchandise, but after this lapse of time I am unable to give the names of all the vessels, but the following were among the number: The Norfolk Packet. The line was direct to Apalachicola from New York, and by Chattahoochee River from Apalachicola to Eufaula. The steamers that plied between these points were the "Barnett," the "C. D. Frye," "New Jackson," "Glide," "Julia St. Claire," "Baudy Moore," and others. I am unable at this late date to attach any receipt given on payment of the freight by or for me on such shipments.

2nd. Answering the second cross. The route by river from Apalachicola to Eufaula was the usual route over which shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, to Eufaula from the close of the war up to about 1867. Since then, and after the railroads were fully reconstructed, the shipments have been principally by rail; but there have been occasional years when, on account of a lower rate being furnished by water route, shipments were made principally or largely by said water route. I do not receive monthly shipments from the cities named in this interrogatory, and have not been actively engaged in business for 10 months past. Up to that time I received yearly shipments of several carloads of bagging; since then I have received no shipments from said cities which came to me at Eufaula via river from Apalachicola, nor by any other route. I am unable to state whether or not Eufaula merchants ship their goods from Northeastern cities by river via Apalachicola to Eufaula.

3rd. Answering the third cross. As stated in my direct examination, I have received at Eufaula shipments by the river via Apalachicola from Mobile and New Orleans consisting of Western products, such as meat, hay, corn, but I am unable to state from which of said cities in each instance the shipments were made, further than to state that from New Orleans I received hay, meat, and corn, and from Mobile I received iron ties and other commodities, the character of which I do not now remember. The only name of the steamer or vessel on which said shipments were received was the steamer-ship "Florida," which came from New Orleans, touched at Mobile, and came to Apalachicola. Some of the vessels were sail vessels, the names of which I do not remember. The names of the steamboats from Apalachicola to Eufaula were the "Barnett," the "Frye," "New Jackson," "Glide," "Julia St. Claire," the "Baudy Moore," the "Atlanta," etc. These shipments were received many years ago,
535 and I am unable to attach a copy of the receipt given on payment by or for me of the freight charged on any of such shipments.

4th. Answering the fourth cross. The route by river from Apalachicola to Eufaula was the usual route over which shipments were made to me from Mobile and New Orleans for the period from the close of the war up to 1872. Prior to the completion of the M. & E. road all shipments from Mobile and New Orleans came by said water route; after that road was completed the rail route was the usual route for the receipt of shipments from said cities, the railroad company having adapted its rates to the

water rates. As stated in my direct examination, not having been engaged in active business for the past 18 months, I do not receive at Eufaula any shipments from Mobile or New Orleans. I am unable to state whether or not Eufaula merchants ship their goods from Mobile or New Orleans to any extent by river via Apalachicola to Eufaula.

5th. Answering the fifth cross. The shipments testified about in my direct examination as having been received from Mobile and New Orleans at Eufaula via Apalachicola by river originated at Cincinnati, St. Louis, New Orleans, and Mobile.

6th. Answering the sixth cross. On shipments from Ohio River points via the Ohio & Mississippi rivers to New Orleans, thence by water to Apalachicola, thence by river to Eufaula, transfers have to be made at New Orleans from the Mississippi River boat to the Gulf vessel and at Apalachicola to the river boat, but this does not involve additional expense and delay, as these shipments are made on through bills of lading.

7th. Answering the seventh cross. On shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Apalachicola to Eufaula, through bills of lading and rates would be given, and at Apalachicola the river boat would go longside of the steamer at the near or outside anchorage at Apalachicola and freight would be hoisted from the vessel into the boat without additional expense.

8th. Answering the eighth cross. It would require from eight to twelve days for a shipment to be made from Louisville, Cincinnati, and St. Louis or other Ohio River points to Eufaula by water, and it would require from five to twelve days for such shipment to be made by rail or the usual rail route; this is owing to the crowded state of affairs. Shipments by water from New York and other Northeastern cities to Eufaula require from 20 to 25 days, and by rail seven or eight days.

9th. Answering the ninth cross. I know of no direct line of steam vessels running from Apalachicola to New Orleans, but I think vessels from Savannah to New Orleans touch at Apalachicola. Ordinarily it takes from five to eight days to make the trip in a sailing vessel from Apalachicola to New Orleans; in bad weather the time required would be altogether uncertain.

10th. Answering the tenth cross. Apalachicola is situated on the Gulf Coast. A shipment from New York or other Northeastern cities would have to pass around Florida Keys and the extreme southern point of the peninsular of Florida to reach Apalachicola.

11th. Answering the eleventh cross. The distance by water from Eufaula to Apalachicola is about 250 miles. I am unable to state the distance by water from Apalachicola to Mobile or New Orleans, nor the distance by water from Boston, New York, Philadelphia, or Baltimore around Florida Keys to Apalachicola.

12th. Answering the twelfth cross. Boats run from Eufaula to Apalachicola three times a week. I am unable to state how often boats run from Apalachicola to Mobile or New Orleans or to Northeastern cities. Boats arrive at Eufaula from Apalachicola three times a week.

13th. Answering the thirteenth cross. It is impossible for me to designate specifically what other goods than cotton I have shipped from Eufaula by river to Apalachicola and thence by water to Mobile and New

Orleans, except that at one time (several years ago) considerable quantities of peas were shipped over that route from Eufaula to New Orleans, but I do not remember the name of the steamer or vessel on which said shipments were made.

14th. Answering the fourteenth cross. The route from Eufaula to Apalachicola by river was the usual and only route on which said shipments were made up to about 1867, and after that time, up to about 1872, there were considerable shipments by that route, and after 1872 irregular shipments were made by that route. I am unable to state more definitely the proportion of shipments made by me from Eufaula to Mobile and New Orleans by river via Apalachicola. As stated in my direct examination, not being now engaged in active business, I do not make any shipments either monthly or yearly from Eufaula by river via Apalachicola to Mobile or New Orleans or by any other route.

15th. Answering the fifteenth cross. The class of vessels now plying between Apalachicola and other points are principally sail vessels. Only light-draft vessels can enter the harbor at Apalachicola. (By light-draft vessels I mean vessels drawing fifteen or eighteen feet of water.) Apalachicola Harbor is not used exclusively for lumber, there being considerable merchandise coming into and shipped up Apalachicola River. I do not exactly understand what is meant by the question, "Was not the bar at Apalachicola destroyed during the war?" A bar is considered an obstruction. The channel has been cleared and deepened to the anchorage of vessels sufficient for all purposes. This was done 12 or 15 years ago. At this time there is no difficulty for any vessel of ordinary draft entering the harbor. I can not state positively, but I think there are vessels touching regularly at Apalachicola, both steamer and sail, to Mobile and New Orleans and Northeastern cities and foreign ports, but I am unable to state the name of such steamer or vessel or vessels. I know of no cotton or other goods now being shipped to Apalachicola for direct export from Eufaula, and as to shipments from other points I do not know.

16th. Answering the sixteenth cross. I can only speak of the
537 time up to my last connection with the shipping business, which was in 1881 or '2; up to that time through bills of lading on shipments from Eufaula by river via Apalachicola to Mobile or New Orleans and foreign ports could be secured. Such bills could have been negotiated with the banks. Such shipments could be counted on with reasonable certainty as reaching Mobile or New Orleans in time to take such ocean steamer as may have been engaged for them.

17th. Answering the seventeenth cross. There is an extra river insurance on cotton and other goods shipped by river from Eufaula to Apalachicola, and from Apalachicola to Mobile or New Orleans. What the amount of this extra insurance now is I can not state; when I was engaged in the freighting business this charge was nominal, and often included the freight charges, and was carried at the boat's expense.

18th. Answering the eighteenth cross. The law requires cotton shipped by river to be covered entirely by bagging, by passenger-carrying steamers only. The expense of putting on this extra bagging is only the time incurred, for the extra bagging pays profit in the increased weight of the bale.

19th. Answering the nineteenth cross. Shipments around Florida Keys I can not say are regarded as extra hazardous, there being two routes—the inside route and the outside, or channel route; and when the outside route is taken there is only the usual marine insurance charged, but when the inside route is taken the insurance rate is somewhat higher.

20th. Answering the twentieth cross. I have never known an instance in which the Eufaula banks made a difference in discounting drafts where cotton is shipped by river.

21st. Answering the twenty-first cross. The rules recently adopted by the Liverpool Cotton Association do not call for the rejection of cotton having on the extra jute bagging required on cotton shipped by river.

22nd. Answering the twenty-second cross. It is difficult to give specific data from which I estimate the effect of water competition by river between Eufaula and Apalachicola, and thence by water to Mobile, New Orleans and Northeastern cities and Ohio River points, on railroad rates between Eufaula and these cities and points, for the reason that railroads have always adapted the rates of the water routes, they having been established prior to the railroads reaching this place. I can state, however, as some data for this estimate, the fact that the rates which are given to Eufaula by the railroads, because of the river, are not given to towns or stations near Eufaula upon the line of the same railways. Cuthbert, Georgia, pays about 30 % more on freights from the East than Eufaula does; still, she is about 25 or 30 miles nearer the East than Eufaula. Comer's Station on the M. & E. R. R. pays about the same pro rata, and Comer's is about 18 miles nearer the Western markets. I know that water competition has at times actually controlled and fixed rail rates—that is, caused rail rates to be changed to compete with water rates from Eastern markets; and this was during the period from about 1875 to 1880.

538 *Answers of W. R. Moore to the direct and cross interrogatories propounded to him in the above-entitled cause.*

W. R. MOORE, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is William R. Moore; age, 47; residence, Columbus, Georgia; occupation, steamboat agent.

2nd. Answering the 2nd direct interrogatory. I have been engaged in steamboating on the Chattahoochee River between Columbus and Eufaula and Apalachicola. I have been engaged in steamboating on the Chattahoochee River between Columbus and Apalachicola for about 8 years. Beginning in 1864, I was in that business for about 5 years, and then again about 1880 and continued for about three years, and since then I have been the agent for the boats as above stated.

3rd. Answering the 3rd direct interrogatory. There are three steamboats now running between Columbus, Eufaula, and Apalachicola. Their names and tonnage are: "Flint", with a tonnage of 135.57 tons; "Naid", with a tonnage capacity of about 130 tons; "Bay City", with a tonnage capacity of about 100 tons.

4th. Answering the 4th direct interrogatory. The average time required for a boat to go from Columbus to Apalachicola and return is about 5 days, and from Eufaula to Apalachicola and return is about 4 days.

5th. Answering the 5th direct interrogatory. The Chattahoochee River is navigable for steamboats between Columbus and Apalachicola all the year.

6th. Answering the 6th direct interrogatory. The fact that the Chattahoochee River is navigable by steamboats between Columbus and Apalachicola does not, I think, have any effect upon the rates charged by railroads between Columbus and Eufaula and Mobile, or between Columbus and Eufaula and New Orleans, and between Columbus and New York and other Eastern cities. At certain seasons of the year, on account of the low stage of the water in the river, the boats would be unable to do the business from the East, and steamers could not get up to anchorage in the bay at Apalachicola on account of the condition of this bay.

7th. Answering the 7th direct interrogatory. The rail rates now charged by railroads between Columbus and Eufaula and Mobile, and between Columbus and Eufaula and New Orleans, are lower than they formerly were. Said rates have been declining since 1870. On account of vessels being able to land right at the dock at Savannah, it enables them to put their goods through at a much less rate, as there is not so much handling to be done. In former years Western freight went down the Mississippi River to New Orleans, and from there to Apalachicola, and from Apalachicola to Columbus and Eufaula, whereas they now come direct by rail, and consequently require much less expense in handling.

539 8th. Answering the 8th direct interrogatory. If the rail rates on cotton from Eufaula and Columbus to New Orleans should be increased 18 cents per 100 lbs., the effect, in my opinion, would be to have the tendency to again open up the shipment of cotton by river to Apalachicola and thence by vessel to New Orleans, and Eastern points.

9th. Answering the 9th direct interrogatory. If the rail rates from Cincinnati, Louisville, and St. Louis to Columbus and Eufaula were increased over those now in effect as specified in this interrogatory, the effect would be to have a tendency to open up the shipment of freight via the Ohio and Mississippi rivers from those points to New Orleans, and thence by vessel to Apalachicola and by steamboat from Apalachicola to Eufaula and Columbus.

10th. Answering the 10th direct interrogatory. The difference existing between the circumstances and conditions effecting the transportation of traffic to and from Columbus and Eufaula, and those effecting Troy, are as follows: Columbus and Eufaula, being situated on a navigable river, naturally have the advantage over Troy in the way of rates, Troy being an inland city and about 90 miles from the river and can be reached by rail only.

11th. Answering the 11th direct interrogatory. If steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola the lowest rate per 100 lbs. at which they could afford to carry freight between Columbus and Apalachicola would be 35.4 on first class, and so on down.

12th. Answering the 12th direct interrogatory. The rates now usually charged by steamboats between Columbus and Apalachicola on the different classes of freight referred to in the 9th interrogatory are as follows: On 1st class, 35.4 per 100 lbs.; 2nd class, 29.1 per 100 lbs.; 3rd class, 22 per

0 lbs.; on Class F, 15 cents per barrel. The charges on other classes specified in the interrogatory I do not now remember.

13th. Answering the 13th direct interrogatory. If the volume of traffic was such, and the rates obtainable were such, as are referred to in 11th interrogatory, any amount of steamboat tonnage necessary could be obtained for traffic on the Chattahoochee River.

14th. Answering the 14th direct interrogatory. I am not sufficiently informed to state what is the lowest rate per 100 lbs. at which steamships or sail vessels could afford to carry freight between Apalachicola and Mobile and New Orleans, if they could obtain full cargoes during the year on every trip going and returning, between said points.

15th. Answering the 15th direct interrogatory. I am not sufficiently informed to be able to state what is the lowest rate per 100 lbs. at which steamships or sail vessels could afford to carry freight between Apalachicola and New York and other Eastern cities, if they could obtain full cargoes all during the year between those points.

540 16th. Answering the 16th direct interrogatory. There are 6 competing rail lines and 4 boat lines at Columbus. Included in the rail lines above mentioned, there are three which are part rail and part water lines.

17th. Answering the 17th direct interrogatory. There are the following routes of transportation between Columbus and the Atlantic seaboard, viz: The Central Railroad, the Columbus Southern Railroad, and the Georgia Midland & Gulf Railroad.

18th. Answering the 18th direct interrogatory. There are 4 steamboat lines from Columbus to the Gulf of Mexico, viz: The Central Line, People's Line, Columbus & Gulf Navigation Co., the Merchants & Planters Line. The Mobile and Girard Railroad also has connections with the Gulf.

19th. Answering the 19th direct interrogatory. There are from Columbus to Northern and Eastern cities, the following lines of transportation: The Central Railroad, the Georgia Midland & Gulf Railroad, and the Columbus Southern Railway Co.

20th. Answering the 20th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. The boats named by me in my direct examination as running between Columbus, Eufaula, and Apalachicola all run all the way from Columbus to Apalachicola. All of said boats take in all the landings between Columbus and Apalachicola, there being about 164 of said landings.

2nd. Answering the 2nd cross. The distance by river from Columbus to Apalachicola is 360 miles, and from Eufaula to Apalachicola by river is 275 miles. The distance from Columbus to River Junction by river is 223 miles and to Chattahoochee is 223 miles, and from Eufaula to River Junction is 138 miles and to Chattahoochee is 138 miles.

3rd. Answering the 3rd cross. The bulk of the business done by boats on the Chattahoochee River is business done between landings above

Apalachicola. There is no through business from or to Columbus or Eufaula via Apalachicola from or to Mobile or New Orleans, or New York and other Northeastern cities. I do not know of any shipments, and there are none, from Louisville, Cincinnati, and St. Louis via the Ohio and Mississippi rivers to New Orleans and thence by Apalachicola to Eufaula or Columbus.

4th. Answering the 4th cross. From 1864 to 1869 I served in the capacity of engineer, and, after that, sometime in the 80's, I was master about three years. The boat was owned by private parties and run in connection with all the railroads touching the river, but only as a connecting carrier.

5th. Answering the 5th cross. One line of boats on the Chattahoochee River is owned by the Plant system, and the other three are independent lines. There are none, so far as I know, controlled by the Central of Georgia system, or any other railroad company, except as above stated. Said boats do carry freight to Chattahoochee to be transferred thence by the S., F. & W. Ry. and by the F., C. & P. Railroad to Savannah. The Alabama Midland Railway does not cross the river at Chattahoochee, but at Alaga. River is the same distance from Savannah as Chattahoochee.

6th. Answering the 6th cross. While I was steamboating on said river, in 1864 and the following years, up to 1875, my boat did haul through freight from or to Columbus or Eufaula via Apalachicola, which came to or from Mobile, New Orleans, New York, or other Northeastern cities, but since that time no such through freight has been hauled by boats with which I was connected. The lapse of time has been so great that I can not now speak definitely in answer to the remainder of said 6th cross-interrogatory, except to say that at that time we did all the business (practically all) which was done between Columbus and Eastern and Western cities, referred to in said interrogatory. After the completion of the rail lines to the Gulf and Atlantic ports all through business was done as I have stated.

7th. Answering the 7th cross. Ocean or Gulf steamers or vessels can not enter the harbor at Apalachicola. Freight carried on a river boat to Apalachicola, destined for Mobile or New Orleans, or New York or other Northeastern cities, or brought from those cities to Apalachicola, destined for Eufaula or Columbus, would have to be transferred at Apalachicola to or from the ocean or Gulf steamer or vessel from or to the river boat. These transfers are made with barges towed out to said ocean or Gulf vessels or from them to the river boat. Vessels not exceeding 5 or 6 feet of draft can enter the harbor at Apalachicola on a high tide. Such a vessel could make a trip to Mobile in two days. I do not know the time it would require such a vessel to make the trip to New Orleans or New York. There is a small steamer and a schooner now running between Apalachicola and Mobile, but none, so far as I know, running between Apalachicola and New Orleans or New York. The time required for said small steamer to make the trip between Apalachicola and Mobile is about two days. The time for such schooner to make this trip would be dependent entirely upon the condition of the weather, and I am unable to state the time required for such schooner to make the trip in ordinary weather; and neither do I know what time it would require such steamer or schooner to make the trip between Apalachicola and New Orleans or New York.

In going from Apalachicola to New York or other Eastern cities a vessel would have to pass around Florida Keys. I do not know the distance from Apalachicola around Florida Keys by water to New York, nor the distance by water from Apalachicola to Mobile or New Orleans.

8th. Answering the 8th cross. According to my idea, there is no harbor at Apalachicola, because the bay is so filled up that there is not sufficient depth for vessels to enter it, except of very light draft, as above stated. Said bar was not destroyed or made comparatively useless during the war. The harbor at Apalachicola is used almost entirely for lumber.

9th. Answering the 9th cross. I have no data which I can now furnish upon which I based my opinion in answer to the direct interrogatories as to the effect of the supposed increase of rail rates, specified in said direct interrogatories, upon the river traffic between Columbus and Eufaula and Apalachicola, but the opinion so given by me was based upon my general business observation and experience.

10th. Answering the 10th cross. There has been a time within my knowledge when steamers could obtain full cargoes of freight during certain seasons of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, but none during the entire season of navigation. I do not think it probable for such a state of boat traffic to ever exist during the entire season of navigation. My answer as to the lowest rates at which boats could afford to carry freight was not guess work, but was based upon my knowledge and experience in that line of business. I did not, in answer to the direct interrogatories, state any estimate as to the lowest rates for which steamboats and vessels sailing or running between Apalachicola and Mobile, New Orleans, or New York and other Eastern cities could afford to carry freight under the conditions specified in the direct interrogatories, nor do I know that the conditions specified have ever existed, and do not think it probable that they ever will exist. I did not give any opinion, as I have already stated, as to the lowest rates of steamers or sailing vessels between the points named, and the rates I did give as the lowest rates for which steamboats could carry freight under the conditions specified are not based upon guess, but upon my knowledge and experience in the steamboat business.

11th. Answering the 11th cross. I am now agent for the boat lines in Columbus, Georgia.

543 *Answers of J. Joseph to the direct & cross-interrogatories propounded to him in the above-stated cause.*

J. JOSEPH, being duly sworn, deposes and says :

1st. Answering the 1st cross. My name is J. Joseph ; age, 62 ; residence, Columbus ; occupation, general manager of the Columbus & Gulf Navigation Company.

2nd. Answering the 2nd direct interrogatory. I have been engaged in steamboating on the Chattahoochee River between Columbus and Eufaula and Apalachicola. I am engaged in it now, and have been for the last seven years.

3rd. Answering the 3rd direct interrogatory. There is at present only three steamboats running between Columbus, Eufaula, and Apalachicola,

viz: The "Naid," tonnage of 150; "Flint," about 150 tons, perhaps a little more, and the "Bay City," with a tonnage of about 130 tons.

4th. Answering the 4th direct interrogatory. The average time required for a boat to go from Columbus to Apalachicola and return is about 5 or 6 days in ordinarily high water, and in low water it takes 7 days or more.

5th. Answering the 5th direct interrogatory. The Chattahoochee River is navigable by steamboats between Columbus & Eufaula and Apalachicola for 6 months or more in the year by ordinary river steamboats, and during the summer months it is navigable by small boats and barges.

6th. Answering the 6th direct interrogatory. I am unable to state what effect, if any, the fact that the Chattahoochee River is navigable for steamboats between Columbus, Eufaula, and Apalachicola has upon the rail rates between Columbus and Eufaula and Mobile and New Orleans, and also between Columbus and Eufaula, and New York and other Eastern cities.

7th. Answering the 7th direct interrogatory. The rates which are now charged between Columbus and Eufaula and Mobile and New Orleans are, I think, lower than they formerly were. There are no goods shipped in that direction from Columbus at this time. I am unable to state when the various reductions in these rates were made or what were the causes of those reductions.

8th. Answering the 8th direct interrogatory. If the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per 100 lbs. it would not have any effect towards inducing the shipment of cotton or other freight by river to Apalachicola, thence by vessel to New Orleans, because this route is an impracticable one, there being other routes more convenient.

9th. Answering the 9th direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Columbus & Eufaula should be increased above those now in effect, as specified in this interrogatory, I do not think it would have any effect towards inducing the shipment of freight via the Ohio & Mississippi rivers to New Orleans, and thence by vessel to Apalachicola and by steamboat to Columbus and Eufaula.

544 10th. Answering the 10th direct interrogatory. I do not think there is any material difference effecting the transportation of traffic to and from Columbus on the one hand and Troy, Alabama, on the other.

11th. Answering the 11th direct interrogatory. If steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, the lowest rate per 100 lbs. at which they could afford to carry freight would be 20 % lower on all classes than the present rate.

12th. Answering the 12th direct interrogatory. If the volume of traffic on the Chattahoochee River was such that full cargoes could be obtained by steamboats during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, and the rates obtainable were 20 % lower than the present rates, all the steamboat tonnage necessary to do the business could be obtained for such traffic.

13th. Answering the 13th direct interrogatory. If steamboats or sail vessels could obtain full cargoes on every trip going and returning between Apalachicola and Mobile and New Orleans, I am not able to state the

lowest rate per 100 lbs. at which they could afford to carry freight between Apalachicola and Mobile and New Orleans.

14th. Answering the 14th direct interrogatory. If steamboats and sail vessels could obtain full cargoes during the year between Apalachicola and New York, I am not able to state what is the lowest rate per 100 lbs. at which they could afford to carry such freight.

15th. Answering the 15th direct interrogatory. If steamboats could obtain full cargoes during the year between New Orleans and Louisville, Cincinnati and St. Louis, I am not able to state what is the lowest rate per 100 lbs. at which they could afford to carry such freight.

16th. Answering the 16th direct interrogatory. There are the following competing lines of transportation at Columbus: The all-rail lines—the Central, the Georgia Midland, and the Columbus So'tuern; the all-water lines—the Central Line, People's Line, the Merchants' & Planters' Line, the Columbus & Gulf Navigation Co. There are 6 railroads that connect with this water route.

17th. Answering the 17th direct interrogatory. There are the following transportation routes from Columbus to the Atlantic seaboard: The Central, Georgia Midland, Columbus Southern.

18th. Answering the 18th direct interrogatory. There are the following transportation routes from Columbus to the Gulf of Mexico: Chattahoochee River, the Central Railroad, Savannah, Americus & Montgomery Railway, the Alabama Midland, Pensacola & Atlantic Railroad. Such water route is composed of the following lines: Central Line, People's Line, Merchants' & Planter' Line, Columbus & Gulf Navigation Co.

545 19th. Answering the 19th direct interrogatory. I do not know and can not set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the 1st cross. The boats named by me in my direct examination as running on the Chattahoochee River between Columbus, E'faule, and Apalachicola all run all the way from Columbus to Apalachicola. These boats run between about 75 landings, which I can not designate at this time.

2nd. Answering the 2nd cross. The distance by river from Columbus to Apalachicola is 360 miles; from Eufaula to Apalachicola, 255 miles; from Columbus to River Junction is 224 miles; distance from Eufaula to River Junction is 139 miles; from Eufaula to Chattahoochee, which is the same place as River Junction, is 139 miles.

3rd. Answering the 3d cross. The volume of the business done by boats on the Chattahoochee River is business between landings above Apalachicola. The through business on the Chattahoochee River between Columbus and Eufaula and Mobile and New Orleans or New York and other Eastern cities, is very small in comparison with the local business between landings above Apalachicola. I do not know of any shipments from Louisville, Cincinnati, and St. Louis via the Ohio & Mississippi rivers to New Orleans, and thence by vessel to Apalachicola and to Eufaula and Columbus by river.

4th. Answering the 4th cross. I stated in my direct examination, and now restate the same, that I am engaged in steamboating on the Chattahoochee River as general manager. The boats are not owned by any railroad company, but by a private corporation; they do business with the railroads touching the river, but they are under a different management. The railroads referred to are as follows: The Central Railroad, the Georgia Midland, Columbus Southern S. A. & M. Ry., Ala. Mid., Florida Central & Peninsular Rd., the Pen. & At. Rd. The only connection between these railroads and these boats is that of connecting carriers.

5th. Answering the 5th cross. One of the boat lines on the Chattahoochee River, to wit, the People's Line, is owned and controlled by the Plant system. This is the only line owned or controlled by the railroads. Said boats do carry freight to Chattahoochee to be transferred thence by the S. F. & W. R. R. to Savannah. The Alabama Midland Railway does not cross the Chattahoochee River at River Junction. River Junction is about the same distance from Savannah as Chattahoochee.

6th. Answering the 6th cross. While I have been engaged in steamboating on the river my boats did not carry any freight from or to Columbus or Eufaula via Apalachicola from or to New Orleans, Mobile, New York, or other Northeastern cities, and for this reason I can not answer the remainder of said interrogatory as to their carrying such through freight. The boats make trips from Columbus and Eufaula and
546 Apalachicola once a week. It requires about 3 days to go from Columbus to Apalachicola and about 2½ days to go from Eufaula to Apalachicola.

7th. Answering the 7th cross. Ocean or Gulf steamers or vessels can not enter the harbor at Apalachicola. Freight carried by river boats to Apalachicola destined for Mobile or New Orleans or New York or other Eastern cities, or brought to Apalachicola from those places in vessels, destined for Eufaula or Columbus, would have to be transferred at Apalachicola from one vessel to another. Such transfers are made in barges. Only very light vessels of about 5 feet draft can enter the harbor at Apalachicola. Such vessels that enter the harbor at Apalachicola might be able to make the trip to Mobile, but I do not think they could make the trip to New Orleans or New York from Apalachicola. It would probably require two days to go from Apalachicola to Mobile. There is one small steamer running between Apalachicola and Mobile, and none between Apalachicola and New Orleans or New York. In going from Apalachicola to New York or other Eastern cities a vessel would have to pass around Florida Keys. I do not know the distance by water from Apalachicola around Florida Keys to New York; nor do I know the distance from Apalachicola by water to Mobile or New Orleans.

8th. Answering the 8th cross. There is only about 6 feet of water in the inside harbor at Apalachicola. I do not know whether said bar was destroyed or made comparatively useless during the war or not. The harbor at Apalachicola is used mainly for the lumber business, in fact, almost entirely.

9th. Answering the 9th cross. I can furnish no data upon which my estimate or opinion was given in answer to the direct interrogatories as to the supposed effect of an increase of rail rates as specified in the direct interrogatories.

10th. Answering the 10th cross. Within my knowledge there never was a time when steamboats could obtain full cargoes during the entire season of navigation on every trip going and returning between Columbus, Eufaula, and Apalachicola, nor a time when the river rates were 20 % lower than they are now. I know of no reason to think that it is probable that such a condition of affairs will ever exist. My answer as to the lowest rate is not guess work, but a matter of opinion based upon my knowledge and experience as a steamboat man. I did not undertake to state in my answers to the direct interrogatories the lowest rates at which steamers or sailing vessels running between Apalachicola and Mobile or New Orleans, or New York or other Eastern cities, under the circumstances named in said interrogatories, could carry freight, and for that reason I can not further answer this cross-interrogatory.

11th. Answering the 11th cross. As stated in my answer to the direct interrogatories, I am engaged as general manager for the Columbus & Gulf Navigation Co., at Columbus, Georgia.

547 *Answer of A. Berringer to the original and cross-interrogatories propounded to him in the above-entitled cause.*

A. BERRINGER, being first duly sworn, deposes and says :

1st. Answering the first direct interrogatory. My name is Abraham Berringer; age, 54; residence, Eufaula, Alabama, and occupation, dealer in dry goods.

2nd. Answering the second direct interrogatory. I have been engaged in my present occupation about 40 years.

3rd. Answering the third direct interrogatory. I have received shipments of goods at Eufaula which came via Apalachicola from Mobile and New Orleans. In the last 10 or 15 years I have been engaged in the dry goods business exclusively, and have shipped but little, if any, goods by the river mentioned from Mobile or New Orleans. Prior to that time I also dealt in groceries, and from New Orleans I have shipped by said river route molasses and all kinds of groceries, and from Mobile principally coffees. I dealt very largely at that time in groceries, and shipments by said route from points named were quite large and frequent. I can not state more specifically how often said shipments were so received, except that I received shipments by nearly every boat that came to Eufaula by that route. The value of these shipments amounted to probably 20 or 30 thousand dollars per annum.

4th. Answering the fourth direct interrogatory. I am unable to state how many steamboats are now running on the Chattahoochee River between Eufaula and Apalachicola. I am unable to state the average time required for a boat to go from Eufaula to Apalachicola and return.

5th. Answering the fifth direct interrogatory. The Chattahoochee River is navigable by steamboats from Eufaula to Apalachicola all the year round.

6th. Answering the sixth direct interrogatory. The fact that the Chattahoochee River is navigable by steamboats from Eufaula to Apalachicola has the effect of preventing the railroads from overcharging in their rates between Eufaula and Mobile, New Orleans, and New York and the other Northeastern cities.

7th. Answering the seventh direct interrogatory. If rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freight in proportion, it would force shippers to ship cotton and other freights by river to Apalachicola, and thence by vessel to New Orleans.

8th. Answering the eighth direct interrogatory. I am not sufficiently informed to say what effect an increase in railroad rates, as specified in said eighth interrogatory, would have towards inducing the shipment of
548 freight via the Ohio and Mississippi rivers from Louisville, Cincinnati, and St. Louis to New Orleans, thence by vessel to Apalachicola and by steamboat from Apalachicola to Eufaula, inasmuch as in my business my shipments are made from the East and not from the points named in said eighth interrogatory.

9th. Answering the ninth direct interrogatory. The principal difference existing between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Alabama, and those affecting the transportation of traffic to Troy, Alabama, is that at Eufaula we have the river to fall back upon when the railroad rates are unreasonable, while Troy is an inland town and without access to water transportation.

10th. Answering the tenth direct interrogatory. There are really but two competing lines of carriers at Eufaula, one being the river and the other the railway lines, which are under the same management. We can ship by the M. & E., by the E. & O., by the Southwestern, and also by the river.

11th. Answering the eleventh direct interrogatory. The population of Eufaula and its suburbs is about 6,000.

12th. Answering the twelfth direct interrogatory. There are at Eufaula the following manufacturies: Oil mill, Eufaula Cotton Mill, gas works, electric-lights works, Chewalla Cotton Mills, recently constructed, in which the machinery is now being placed; ice factory, marble works, two carriage factories, guano factory, but I am unable to state how many hands they employ.

13th. Answering the thirteenth direct interrogatory. I do not know of anything further I can set forth, or matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

Cross-interrogatories :

1st. In answer to the first cross. I did not, in my direct examination, state that I had received at Eufaula any shipments of goods by the Chatahoochee River via Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, and for that reason can not further answer said first cross-interrogatory.

2nd. In answer to the second cross. The route by river from Apalachicola to Eufaula is not the usual route over which shipments have been made to me from the cities named in said first cross-interrogatory. All the shipments I receive from Boston, New York, Philadelphia, Baltimore, and Northeastern cities come principally by water to Savannah, and from Savannah by rail to Eufaula. All of my business is done with said Eastern cities, except domestics, which are shipped from Columbus either by rail or river. Such shipments are received from said Eastern cities

every few days. I am unable to state more definitely how often.
 549 As stated above, no such shipments to me at Eufaula are made from said cities via Apalachicola by river, and I have already stated as definitely as I can how many shipments come by other routes. I think that some of the merchants of Eufaula who deal in heavy goods, such as bagging, ties, machinery, etc., to some extent ship their goods from Northeastern cities via Apalachicola, and by river to Eufaula, but to what extent I am unable to state, having had to experience in that business for many years.

3rd. Answering the third cross. Owing to the long lapse of time since I have received goods from Mobile or New Orleans via Apalachicola by river to Eufaula, as stated in my answer to the third direct interrogatory, I am unable to state more specifically of what said shipments consisted or the name of the steamer or vessel or water line on which such shipments were made to Apalachicola and from Apalachicola to Eufaula, and am unable to attach to my answer a copy of any receipts given on payment by or for me of the freight charged on said shipments.

4th. In answer to the fourth cross. I adopt as my answer hereto the answer made by me to the third direct interrogatory, and further state that Eufaula merchants ship very little goods, if any, from Mobile and New Orleans to Apalachicola and thence to Eufaula by river.

5th. In answer to the fifth cross. The shipments received by me from Mobile and New Orleans via Apalachicola by river to Eufaula many years ago, as stated in my answer to the third direct interrogatory, originated at Mobile, New Orleans, and St. Louis.

6th. In answer to the sixth cross. Shipments from Ohio River points via the Ohio and Mississippi rivers to New Orleans, thence by water to Apalachicola and thence by river to Eufaula, would require a transfer of goods at New Orleans from the river vessel to the gulf vessel, and at Apalachicola to the Chattahoochee River steamer. These transfers would doubtless involve additional expense and delay.

7th. In answer to the seventh cross. The shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Apalachicola by river to Eufaula, would require a transfer of the goods at Apalachicola from the ocean or gulf vessel to the river steamer, and this would involve expense and delay; but this expense and delay is doubtless taken into consideration in fixing the through rate.

8th. In answer to the eighth cross. It would require about eight or ten days for a shipment from Louisville, Cincinnati, St. Louis, and other Ohio River points to Eufaula by water, and a shipment from the same points to Eufaula by rail would require six or seven days. A shipment from New York, Boston, Philadelphia, Baltimore, and other Northeastern cities to Eufaula by an all-water route by steamer would require about ten days, and by sailing vessel from two to three weeks, owing to the weather; and it would require about a week for shipments from these points to Eufaula by the usual rail route.

550 9th. In answer to the ninth cross. I have no personal knowledge as to whether vessels run from Apalachicola to Mobile or New Orleans or Northeastern cities. I think in ordinary weather it would take

about a week or ten days for a sailing vessel to make the trip between Apalachicola and New Orleans, and in bad weather it would be altogether uncertain.

10th. In answer to the tenth cross. Apalachicola is situated on the Gulf Coast, but I am not prepared to say whether a shipment from New York or other Northeastern cities would have to pass around Florida Keys and the extreme southern point of the Peninsular of Florida to reach Apalachicola.

11th. In answer to the eleventh cross. I do not at this time recall the distance by river from Eufaula to Apalachicola. I do not know the distance by water from Apalachicola to Mobile or New Orleans. I do not know the distance by water from New York, Boston, Philadelphia, Baltimore, respectively, around Florida Keys to Apalachicola.

12th. In answer to the twelfth cross. I think boats run from Eufaula to Apalachicola about twice a week. I do not know how often they run from Apalachicola to Mobile or New Orleans; nor do I know how often they run from Apalachicola to Northeastern points. Boats arrive at Eufaula from Apalachicola about twice a week.

13th. In answer to the thirteenth cross. I have not stated in my direct examination that I have shipped cotton or other goods by river to Apalachicola, or by river to Apalachicola and thence by water to Mobile or New Orleans, and therefore can not further answer this cross-interrogatory.

14th. In answer to the fourteenth cross. I adopt as my answer hereto the answer I have just made to the 13th cross, and further state that I ship no goods by other route or routes from Eufaula to Mobile or New Orleans.

15th. In answer to the fifteenth cross. I am unable to state what class of vessels ply between Apalachicola and other points; nor can I state whether any but light draft vessels enter the harbor at Apalachicola. I can only state from information that Apalachicola Harbor is used for lumber alone. I do not know whether the bar at Apalachicola was destroyed or not during the war. I am not informed and can not state whether there is any steamer or sail line from Apalachicola to Mobile or New Orleans or Northeastern cities, or either of them, or to any foreign port, and for this reason can not further answer.

16th. In answer to the sixteenth cross. While I have had no actual transactions of the kind myself, I think a through bill of lading on shipments from Eufaula by river via Apalachicola to Mobile or New Orleans, or other foreign ports, can be procured, and that such bill can be negotiated with the banks. I am unable to state whether such shipments would, with any reasonable certainty, reach Mobile or New Orleans in time to take such ocean steamer as may have been engaged for them.

551 17th. In answer to the seventeenth cross. There is an extra river insurance on merchandise shipped by river from Eufaula to Apalachicola and from Apalachicola to Mobile or New Orleans, and I think there is on cotton, but I can not speak definitely as to that. I am not sufficiently informed to be able to state the amount of such extra insurance.

18th. In answer to the eighteenth cross. I am unable to answer the same for the reason that I have had not experience in the cotton business or in the shipment of cotton.

19th. In answer to the nineteenth cross. I am not able to state and can not state that shipments around Florida Keys are regarded as extra hazardous and that this enhances the rate of insurance on such shipments.

20th. In answer to the twentieth cross. I have had no experience in the cotton business and am therefore unable to answer whether the Eufaula banks make a difference in discounting drafts where cotton is shipped by river.

21st. In answer to the twenty-first cross. I have no information or knowledge as to the rules recently adopted by the Liverpool Cotton Association and therefore can not answer this interrogatory.

22nd. In answer to the twenty-second cross. I have no data upon which I can estimate with certainty the possible effect water competition by the river between Eufaula and Apalachicola, and thence by water to Mobile and New Orleans and Northeastern cities and Ohio River points, has on rail rates between Eufaula and said cities and points. There have been times within my knowledge when this water competition—that is, the Chattahoochee River between Eufaula and Apalachicola—did actually control and fix railroad rates, but that was previous to the year 1880, when I was engaged in the grocery business, but I can not state more precisely when or for how long a time such was the case. At the time referred to, shipments by the Chattahoochee River compelled the railroads to lower their rates to meet the river rates.

552 *Answers of W. F. Shellman to the direct and cross interrogatories propounded to him in the above-entitled cause.*

W. F. SHELLMAN, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is W. F. Shellman; age, 53; residence, Savannah, Georgia; occupation, traffic manager of Central and Savannah & Western railways.

2nd. Answering the 2nd direct interrogatory. I began as receiving clerk at the Central warehouse in 1858; from there went to billing office; about 1859 to bookkeeper's office; in the Army from 1861 to 1864; went back to Central Railroad in 1865; took charge soon after of the billing department; in 1867 was agent of the S. E. & W. Ry. at Bainbridge, Georgia, where I remained until 1870; thence back to the Central Railroad as soliciting agent at Montgomery, Alabama, until 1875, when I was made agent of the Central Railroad at Macon, and remained in that position until about 1880; was then made supt. of the Savannah & Western and M. & E. rrs., about 400 miles, from which position I was made traffic manager of the Central system, say, in September, 1883, which position I have held ever since, except for an interval of about 11 months, say, from June, 1891, to May, 1892, most of which time the company was under a lease to the Georgia Pacific Railroad.

3rd. Answering the 3rd direct interrogatory. The through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F, from Louisville, Cincinnati, and St. Louis, respectively, to Troy, Alabama, were as shown by Exhibit No. 1, hereto attached as a part of this answer.

4th. Answering the 4th direct interrogatory. The proportions of said through rates received by the railroads south or east of Montgomery, for transportation from Montgomery to Troy, were as shown by Exhibit No. 2, hereto attached as a part of my answers.

5th. Answering the 5th direct interrogatory. The proportions in question were reasonably low, as they were not higher than the rates allowed between Montgomery and Troy by the railroad commission of Alabama.

6th. Answering the 6th direct interrogatory. 23 cents per 100 lbs. is a reasonably low rate for rail transportation on cotton from Troy to Montgomery, because it does not exceed what is allowed for rail transportation by the State board of railroad commissioners.

7th. Answering the 7th direct interrogatory. The through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F, from New York, Baltimore, and the Northeast to Montgomery, are shown in Exhibit No. 3, hereto attached as a part of my answers hereto.

8th. Answering the 8th direct interrogatory. The proportions of the through rates received by the C. R. & B. Co., of Ga., for transportation over its part of said through route are shown in Exhibit No. 4, hereto attached.

553 9th. Answering the 9th direct interrogatory. The proportions referred to in my answer to the 8th direct interrogatory, I presume, are greater than the cost of transportation, but the cost of transportation is an unknown quantity.

10th. Answering the 10th direct interrogatory. I beg leave to call attention to the earnings of M. & E. and M. & G. Rys., which will clearly demonstrate that the rates of freight and passage in general are too low, and if the rates are reduced on any part of a business they would have to be advanced on another part of it.

Cross-interrogatories :

1st. Answering the 1st cross. I herewith submit figures showing the rates between Louisville, Cincinnati, and St. Louis, respectively, to Troy, in effect March 1st, 1894. (See Exhibit No. 1.) This company, however, had no interest in any part of the line from those cities to Montgomery or Mobile, and therefore I have no records of what the rates were from said cities to Mobile or Montgomery.

2nd. Answering the 2nd cross. I refer you to Exhibit No. 5, hereto attached, wherein the 2nd cross-interrogatory is fully answered, showing the figures, etc., hereto attached as my answer hereto.

3rd. Answering the 3rd cross. I give the distances called for by this interrogatory from information derived from the Official Railway Guide, so far as the L. & N. Rd. is concerned. The distance from Louisville to Montgomery via the L. & N. Rd. is 490 miles, Cincinnati to Montgomery, 600 miles, St. Louis to Montgomery, 624 miles. The distance by the Alabama Midland from Montgomery to Troy is 52 miles, and by the Georgia Central is 71 miles. The rate per ton per mile yielded by the proportion of the through rate from Louisville, Cincinnati, & St. Louis, through Montgomery, to Troy, charged for the haul from Montgomery to Troy, is as follows :

1	2	3	4	5	6	A	B	C	D	E	H	F
11.8	10.7	9.8	9.1	7.3	5.9	5.9	5.3	3.6	3.3	5.9	7.3	7.3

The rate per ton per mile yielded by the through rate from those cities to Montgomery are as follows :

	1	2	3	4	5	6	A	B	C	D	E	H	F
From Cincinnati ...	3.76	3.55	3.06	2.46	2.05	1.63	1.11	1.15	904	7.6	1.81	1.28	7.6
From St. Louis.....	3.9	3.57	3.08	2.43	2.03	1.63	1.11	1.17	9.4	7.7	1.71	1.34	7.7
From Louisville.....	4	3.7	3.2	2.6	2.1	1.7	1.1	1.3	1	8	2	1.3	8

4th. Answering the 4th cross. As far as the Georgia Central Railroad is concerned, goods are sometimes sent through in the original cars, and at other times transferred in route on through shipments from Louisville, Cincinnati, and St. Louis via Montgomery to Troy. I can not testify as to the custom of the Alabama Midland Railroad as to such transfers. I have no means, at this time, of reducing the extra expense at Montgomery, on these shipments, to figures. Can only say in a general way that in cases where cars are sent through Montgomery to destination we have the expense of shipping them between the L. & N. and Central roads, and in cases where the freight is transferred from car to car, in addition to the expense of switching, there is the expense of transferring them by hand. I am not prepared to state what such expense amounts to per 100 lbs. or per car. I am unable to estimate the comparative expense in connection with through freight from Western points to Montgomery and Troy, for the reason that through shipments from Louisville, Cincinnati, and St. Louis to Montgomery are handled at Montgomery by the L. & N. Rd., the expense of which I am totally ignorant about, and for this reason I can not further answer said cross-interrogatory.

5th. Answering the 5th cross. In relation to the proportion of through rates received by the Alabama Midland and Georgia Central railroads between Montgomery and Troy on business from Louisville, Cincinnati, & St. Louis, they are based on the local rates of the Alabama Midland Ry., which is the short line between Montgomery and Troy, the long line accepting the same proportions. In speaking of these rates as reasonable in my answer to the direct interrogatories, I did so with reference to this fact. There is some difference in the expense of handling local freight and of handling through freight, the expense of handling local freight being greater than the expense of handling through freight per ton per mile. Shipments of freights to Troy, however, would be handled by local trains and could not properly be called through freight, Troy not being a terminal point on the Alabama Midland Railroad. The proportions of the through rates received by said roads for the service of transportation from Montgomery to Troy is substantially the local rate to Troy by the Alabama Midland, which is the short line. In making rates from Montgomery to Troy, Montgomery is not regarded as what is known as a basing point or a distribution point or trade centre in connection with the making of said rates from Montgomery to Troy, as such rates are fixed with the approval of the Alabama railroad commission for 52 miles, and the same rate would apply between any two points on the Alabama Midland for a similar distance.

6th. Answering the 6th cross. Neither the Georgia or the Alabama railroad commissions undertake to prescribe or regulate the through

rates on interstate traffic nor the proportions of such through rates charged for that part of through hauls of such traffic which may be in those States.

7th, To Mr. McLendon only.

8th. To Mr. McLendon only.

9th. Answering the 9th query, I think the revenue of railroads generally throughout the country have fallen off materially during the last two or three years because of the depressed financial and business condition of the country, but there have been some exceptions. I have

555 no knowledge as to the revenue of the Alabama Midland Railway
for the fiscal year 1892-3, or whether it was reduced by cut rates
or rate wars, or whether or not it was an exceptionally bad year.

10th. To Mr. Dunham only.

11th. Answering the 11th cross. There is no cotton shipped from Troy to New Orleans through Montgomery by the Central Railroad, and I do not know what disposition is made of such as is shipped by the Midland road, if any is so shipped, and for that reason I am unable to answer this cross-interrogatory further.

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EXHIBIT No. 1.—W. F. SHELLMAN.

Through rates in effect March 1st, 1894, from Louisville, Cincinnati, & St. Louis to
Troy, Ala.

	Per 100 pounds.												Bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F
Louisville, Ky.....	140	130	113	95	75.5	62	45	50	37	32	69	59	60
Cincinnati, O.....	150	140	123	103	82.5	68	49	52	39	34	73	63	70
St. Louis, Mo.....	168	153	133	109	87.5	72	52	58	44	37	77	69	80

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EXHIBIT No. 2.—W. F. SHELLMAN.

Proportions of through rates from Louisville, Cincinnati, & St. Louis to Troy, Ala., received by the railroads south or east of Montgomery for transportation from Montgomery to Troy, Ala., March 1st, 1864.

Per 100 pounds.												Bbl.
1	2	3	4	5	6	A	B	C	D	E	H	F
42	38	35	32	26	21	21	19	13	12	21	26	26

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EXHIBIT No. 3.—W. F. SHELLMAN.

Through rates in effect March 1st, 1894, from Boston, New York, Philadelphia, and Baltimore to Montgomery, Ala.

[illegible]

EXHIBIT No. 4.—W. F. SHELLMAN.

Proportions of through rates from Boston, New York, Philadelphia, and Baltimore received by the Central Railroad and Banking Company of Georgia for transportation from Savannah, Ga., to Montgomery, Ala.

From—	Per 100 pounds.											Bbl.
	1	2	3	4	5	6	A	B	C	D	E	F
Boston, Mass.....	55.2	47.3	41.1	36	29.3	23.6	16.3	23.1	18.6	18	28.2	36
New York, N. Y. . .	59.5	51	44.3	38.7	31.6	25.5	17.6	24.9	19	19.4	30.3	38.8
Philadelphia, Pa. . .	55.8	47.3	43.1	37.6	30.4	24.3	16.4	23.7	18.8	18.2	29.1	34.6
Baltimore, Md.	54.6	46.1	42.5	37	29.7	23.7	15.8	23.7	18.2	17.6	28.5	35.2

EXHIBIT No. 5 to W. F. S.

2. Cross. How long prior to March 1st, 1894, had said rates from said cities to Troy, to Montgomery, & Mobile been in effect?

Ans. Since March 31, 1891. Prior to that time the rates were as follows:

TO TROY, ALA.

From—	1	2	3	4	5	6	A	B	C	D	E	H	F
Louisville.....	140	130	113	95	78	62	49	50	41	36	69	59	74
Cincinnati.....	150	140	123	103	85	68	53	52	43	38	73	63	78
St. Louis.....	168	153	153	109	90	72	56	58	48	41	77	69	88

TO MONTGOMERY, ALA.

Louisville.....	98	72	78	63	52	41	28	31	28	24	48	33	48
Cincinnati.....	108	102	88	71	59	47	32	33	30	26	52	37	52
St. Louis.....	126	115	98	77	64	51	35	39	35	29	56	43	62

Were not the rates from those cities to Troy and Montg'y, and from the East to Troy and Montgomery, greatly reduced in the latter part of May or the first part of June, 1894? If so, give those reduced rates.

Ans. Yes; the rates were reduced on June 9, 1894.

TO TROY.

From—	1	2	3	4	5	6	A
Louisville.....	80	70	63	56	46	37	37
Cincinnati.....	90	80	73	64	53	43	41
St. Louis.....	132	118	108	96	79	64	44

TO MONTGOMERY.

Louisville.....	38	32	28	24	20	16	16
Cincinnati.....	48	42	38	32	27	22	20
St. Louis.....	66	55	48	38	32	26	23

And on June 4th & 2d the rates from the East to Montgomery & Troy were reduced to the following figures :

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TROY, ALA., JUNE 4, '94.

	1	2	3	4	5	6	A
Boston	82	72	65	58	47	38
New York							
Philadelphia							
Balt.	80	70	64	57	46	37
	79	69	64	57	46	36	.....

MONTGOMERY, ALA., JUNE 2.

	1	2	3	4	5	6	7
Boston	40	34	30	26	21	17	17
New York							
Phila.							
Balt.	38	32	29	25	20	16	16
	37	31	29	25	20	16	16

These reduced rates were withdrawn July 31, '94.

562 *Answer of J. G. Guice to the original and cross interrogatories propounded to him in the above-entitled cause.*

J. G. GUICE, being duly sworn, deposes and says :

1st. Answering the first direct interrogatory. My name is J. G. Guice; age 52; residence, Eufaula, Alabama; occupation, cotton buyer.

2nd. Answering the second direct interrogatory. I have been engaged in my present occupation 29 years.

3rd. Answering the third direct interrogatory. I have shipped cotton by river from Eufaula to Apalachicola. From 1866 to 1868 the shipments were frequent and in large quantities. Since 1868 I have shipped very little direct to Apalachicola by river from Eufaula.

4th. Answering the fourth direct interrogatory. I have received some few goods, but not much, by river at Eufaula which came via Apalachicola from Mobile and New Orleans. I am not engaged in the mercantile business, and have not been, and these shipments consisted of minor articles sent to me for others. They amounted to but little in quantity or value. I am unable to specify the time of these shipments.

5th. Answering the fifth direct interrogatory. I have received one shipment of bagging by river via Apalachicola from Boston, amounting to about twelve or fifteen hundred dollars in value, and this was in 1877 or 8.

6th. Answering the sixth direct interrogatory. I can not specify definitely how many boats are now running on the Chattahoochee River between Eufaula and Apalachicola, but I think there are some five or six. The average time required for a boat to go from Eufaula to Apalachicola and return is three days.

7th. Answering the seventh direct interrogatory. The Chattahoochee River is navigable by steamboats between Eufaula and Apalachicola every month in the year.

8th. Answering the eighth direct interrogatory. The fact that the Chattahoochee River is navigable by steamboats between Eufaula and Apalachicola has the effect of keeping down the rates charged by railroads between Eufaula and Mobile, New Orleans, and New York and other

Northeastern cities. In other words, it has the effect of maintaining reasonable rates by rail.

9th. Answering the ninth direct interrogatory. The rates which are now charged between Eufaula and Mobile and New Orleans are higher than they have been at times, and lower than at other times, such rates having fluctuated from time to time on account of rate wars. The cause of these different reductions has been on account of the rate wars on the river and on account of compromises made between the opposing lines.

563 10th. Answering the tenth direct interrogatory. If the rail rates on cotton from Eufaula to New Orleans should be increased 18 cents per hundred pounds, the effect would be the establishment of boat lines in opposition to the railroads for shipping cotton and other freight by Apalachicola to New Orleans by water.

11th. Answering the eleventh direct interrogatory. Not being engaged in a mercantile business, I am unable to state what effect an increase of rates as specified in this interrogatory would have towards inducing the shipment of freight via the Ohio and Mississippi rivers from St. Louis, Cincinnati, and Louisville to New Orleans and thence by vessel to Apalachicola, and thence by river to Eufaula. But if such a rate proved to be excessive it is my opinion that boat lines would be established on the water routes mentioned.

12th. Answering the twelfth direct interrogatory. Eufaula is situated on a navigable river with an outlet to the Gulf of Mexico, and it also touches about 8 or 10 different railroads by part water and part rail connection, and thereby gives it a system of various competitive lines, while Troy only has two outlets, the Central system and the Midland system. Troy has no water system.

13th. Answering the thirteenth direct interrogatory. There are some 8 or ten competing lines of carriers at Eufaula, including all rail lines, all water lines, and part rail and part water lines, as follows: The Central Railroad via Macon to Savannah and the seaboard; the M. & E. via Montgomery, connecting with the various routes at Montgomery both by water and rail; the Chattahoochee River; the Chattahoochee River, connecting with the J. P. & M. and other roads to Fernandino; Chattahoochee River, connecting by rail with the Jacksonville route; Chattahoochee River, connecting by rail with Savannah, Brunswick, and Charleston; Chattahoochee River, connecting by rail with Pensacola, Mobile, and New Orleans; Chattahoochee River, connecting with S. A. & M. Ry. for Savannah, Brunswick, and the Atlantic seaboard; Chattahoochee River, connecting with the Georgia Southern, making connection with Brunswick and the Southwestern; Chattahoochee River, connecting with the Georgia Midland, thence by R. & D. and E. Tennessee; Chattahoochee River, connecting with the Plant system for Brunswick, Fernandino, Savannah, and Charleston.*

14th. Answering the fourteenth direct interrogatory. The transportation lines from Eufaula to the Atlantic seaboard are specified in my foregoing answer to the 13th interrogatory as fully as I am able to name them.

15th. Answering the fifteenth direct interrogatory. The lines of transportation to the Gulf of Mexico from Eufaula are also stated as fully and specifically in my answer to the 13th interrogatory as I am able to give them.

16th. Answering the sixteenth direct interrogatory. The lines of transportation from Eufaula to the Northern and Western markets are also mentioned in my answer to the 13th direct interrogatory as fully as I am able to give them.

564 17th. Answering the seventeenth direct interrogatory. The population of Eufaula and its suburbs is about 7,000.

18th. Answering the eighteenth direct interrogatory. The amount of cotton annually handled at Eufaula is between forty and fifty thousand bales. This includes cotton brought here to the compress from tributary routes by the river to be reshipped by buyers.

19th. Answering the nineteenth direct interrogatory. The following manufactures are at Eufaula, so far as I can now recall them: Eufaula Cotton Mills, Chewalla Cotton Mills, ice factory, electric light & gas factory, waterworks, bagging factory, milling business, two large brick plants, two carriage and wagon manufactures, Eufaula Soda & Bottling Works, Eufaula Oil Mills, Eufaula Fertilizer Company, cotton compress. I am unable to state how many hands they employ altogether.

Cross-interrogatories:

1st. Answering the first cross. In my answer to the direct interrogatories I stated that I am not engaged in the general merchandise business, and testified to only one shipment of goods received by me at Eufaula via Apalachicola by river from Northeastern cities, and stated that such shipment consisted of bagging. I am unable to give the name of the steamer or vessel, but it was a sail vessel which came from Boston to Apalachicola, and thence by Chattahoochee River from Apalachicola to Eufaula. I can not attach to my answer a copy of the receipt given me on payment by or for me of the freight charged. My best recollection is that the rate of freight charged on said shipment was one-fourth of one per cent per pound.

2nd. Answering the second cross-interrogatory. I can not answer the same further than by referring to my answer to the first cross, which I here adopt as my answer to the second cross. Further answering this cross-interrogatory, I state that not being engaged in a general merchandise business I am unable to say whether Eufaula merchants ship their goods from Northeastern cities via Apalachicola by river to Eufaula.

3rd. Answering the third cross. In my direct examination I testified that I had received no shipments for myself at Eufaula by the river via Apalachicola from Mobile or New Orleans, but simply shipments of some minor articles for other persons, and I am unable to state at this time of what such shipments consisted or the name of the vessel on which any shipment was made to Apalachicola and from Apalachicola to Eufaula, or the name of the water line. I am unable to attach any receipt given on payment of freight.

4th. Answering the fourth cross. My firm are shippers of out-going freight in the way of cotton and are not receivers of any goods or cotton from New Orleans. I am not able to answer to what extent, if any, the merchants of Eufaula ship their goods from Mobile or New Orleans via Apalachicola and thence by river to Eufaula, but I think that most of the shipments made to the merchants here come by rail because the railroads give them satisfactory rates.

565 5th. Answering the fifth cross. In my direct examination I testified to having received only minor shipments from Mobile and

New Orleans at Eufaula via Apalachicola, and these shipments originated principally in New Orleans.

6th. Answering the sixth cross. On shipments from Ohio River points via the Ohio & Mississippi rivers to New Orleans, and thence by water to Apalachicola, and thence by river to Eufaula, a transfer of the goods would have to be made at New Orleans from the Mississippi River steamer or vessel to the Gulf steamer or vessel, and at Apalachicola from the Gulf vessel to the Chattahoochee River steamboat. These transfers would involve some additional expense and delay, but no great delay.

7th. Answering the seventh cross. Shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Apalachicola by river to Eufaula would require a transfer of the goods at Apalachicola from the ocean or Gulf vessel to the river boat, and this would involve some expense and delay, but not much; and the expense so incurred would be included in the rate of freight given from the shipping point. This expense is not as much, or at least not any more, than to transfer from a steamer to a railroad, inasmuch as one steamer runs up close to the other and the freight is discharged directly from one vessel to the other.

8th. Answering the eighth cross. I am unable to state specifically how long a time it would require for a shipment from Louisville, Cincinnati, and St. Louis, or other Ohio River points, to be made to Eufaula by water, or by the usual rail route; but taking into consideration the delays incident to the hauling of freight on railroads, there would be little difference in the time. The usual time, I think, is about 10 or fifteen days by rail, and I think it would be about the same by water. I think the usual time required for a shipment from Boston, New York, Philadelphia, Baltimore to Eufaula by the usual rail route would be ten days to two weeks, and I should think it would be about the same by the all-water route.

9th. Answering the ninth cross. I am not able to state whether or not steam vessels run from Apalachicola to Mobile or New Orleans, or Northeastern cities at this time. My impression is, and I think that freight from Apalachicola is handled by sail vessels. I am not informed as to the time it ordinarily takes to make the trip in a sailing vessel between Apalachicola and New Orleans, either in good or bad weather.

10th. Answering the tenth cross. Apalachicola is situated on the Gulf Coast, and a shipment by water from New York, or other Northeastern city, would have to pass around Florida Keys and the extreme southern point of the peninsular of Florida in order to reach Apalachicola.

11th. Answering the eleventh cross. The distance by water from Eufaula to Apalachicola is about 200 miles. I do not recall the distance from Apalachicola by water to Mobile or New Orleans. I do not know the distance by water from Boston, New York, Philadelphia, or Boston around Florida Keys to Apalachicola.

566 12th. Answering the twelfth cross. I am not posted at present as to how often boats run from Eufaula to Apalachicola, but I think they have regular weekly schedules. I do not know how often boats run from Apalachicola to Mobile or New Orleans or Northeastern cities, nor am I posted as to how often boats arrive at Eufaula from Apalachicola, but they have their regular weekly schedules. We have propositions to

put on steamers into Apalachicola to take our cotton and freights to any water points in the United States or Europe whenever we deem it necessary and can give them freight sufficient to load them.

13th. Answering the thirteenth cross. In my direct examination I did not state that I had shipped other goods than cotton by river to Apalachicola and thence by water to Mobile and New Orleans, and for that reason I can not further answer.

14th. Answering the fourteenth cross. At present we are making no shipments from Eufaula via Apalachicola to Mobile or New Orleans, the present railroads rates being satisfactory, with outlets to the seaboard, being more convenient for the volume of our business at present; but in seasons gone by, and up to as late as 1884, my firm has shipped over 15,000 bales out by part river and part rail routes, some going via Brunswick, some by Fernandino, some by Savannah, some by Jacksonville, and some by Mobile, Pensacola, and New Orleans. My recollection is that in 1884 I had arranged with a sailing vessel to take about fifteen hundred bales by Apalachicola, and when the railroads found this out they gave me a satisfactory rate out at Savannah, and we had said sailing vessel changed to the port of Savannah and loaded there. None of these goods going the routes I have mentioned touched the Central system at all.

15th. Answering the fifteenth cross. I think that vessels now plying between Apalachicola and other points are sailing vessels, but we can get steamers on whenever we give them business. I think that others than light-draft vessels can enter the harbor at Apalachicola. I think that Apalachicola Harbor is now used principally for lumber, but in times gone by it was the second or third port in the United States for cotton. I am not posted as to the condition of the bar at Apalachicola during the war, but know that large quantities of cotton have been shipped out of there since the war. I think that most of the vessels that go into Apalachicola are chartered and brought in there, and I am not informed as to whether there are any regular steamer or sail lines from Apalachicola to Mobile, or New Orleans, or Northeastern cities, or foreign ports. At present no cotton or other goods are shipped to Apalachicola for direct export, for the reason that the present railroad rates are satisfactory.

16th. Answering the sixteenth cross. I can get a through bill of lading on shipments from Eufaula by river via Apalachicola to Mobile or New Orleans or foreign ports, and can negotiate such bill with the banks. Whenever the necessity for making such shipments arises we can count with reasonable certainty upon such shipments reaching Mobile or New Orleans in time to take such ocean steamer as may have been engaged as much so as we can by other routes.

567 17th. Answering seventeenth cross. There is an extra river insurance on cotton and other goods shipped by river from Eufaula to Apalachicola and from Apalachicola to Mobile and New Orleans, the amount of this extra insurance being one-fourth of one per cent.

18th. Answering the eighteenth cross. The law does not require extra bagging to be put on cotton shipped by river, but does require the bale to be covered with bagging. This is also required on cotton shipped by river from Eufaula to Apalachicola. This requirement does not cause any increased expense, for the reason that if the cotton is compressed the

same bagging will cover the bale, and if it is not compressed, the cost of the additional bagging required would be made up in the increased weight of the bale.

19th. Answering the nineteenth cross. I can not state that shipments around Florida Keys are regarded as extra hazardous, but do know that such shipments require an increased rate of insurance, and that at the present value of cotton such increase in the insurance rate is not over six cents on the bale.

20th. Answering the twentieth cross. The Eufaula banks do not make a difference in discounting drafts where cotton is shipped by river.

21st. Answering the twenty-first cross. The rules recently adopted by the Liverpool Cotton Association do not call for the rejection of cotton having the extra bagging required on cotton shipped by river.

22nd. Answering the twenty-second cross. In my answers to the former interrogatories in this series I stated that on one occasion, about 1884, my firm had made arrangements to ship cotton from Eufaula by river to Apalachicola, and there to be taken up by a sailing vessel for Russia, and that the railroads companies, ascertaining that fact, gave us lower and satisfactory rates, which induced us to ship the cotton by rail to Savannah, where we instructed the sailing vessel to change her port and come into Savannah, as such sailing vessel was chartered by us to sail from any port that we might designate. I can not recall at this moment any other data showing that said water competition actually controlled and fixed rail rates.

568 *Answer of George C. McCormick to the direct and cross-interrogatories propounded to him in the above-entitled cause.*

GEORGE C. MCCORMICK, being duly sworn, deposes and says :

1st. Answering the first direct interrogatory. My name is George C. McCormick ; age, 51 ; residence, Eufaula, Alabama ; occupation, merchant.

2nd. Answering second direct interrogatory. I have been engaged in my present occupation since 1865.

3rd. Answering the third direct interrogatory. I have shipped goods, but no cotton, by river from Eufaula to Apalachicola. I have been for a good many years shipping goods from Eufaula to Apalachicola by river, but it is impossible to state how often or what they amounted to ; sometimes by every boat ; sometimes in considerable amounts, and sometimes less. These shipments began eight or nine years ago, and have continued from time to time since.

4th. In answer to the fourth direct interrogatory. I do not know positively, but I think about three steamboats are now running between Eufaula and Apalachicola. I think the average time required for a boat to go from Eufaula to Apalachicola and return is about four days.

5th. Answering the fifth direct interrogatory. The Chattahoochee River is navigable by steamboats every month in the year.

6th. Answering the sixth direct interrogatory. The fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola has the effect of making Eufaula a basing point for railroad rates between Eufaula and Eastern cities, but practically no business is done between Eufaula and Mobile or New Orleans.

7th. Answering the seventh direct interrogatory. If the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds and other freights in proportion, I do not know that it would induce the shipment of cotton by river to Apalachicola from Eufaula, and thence by vessel to New Orleans, as very little cotton is shipped in that direction, but it might induce the shipment of other freights by such water route from New Orleans and Mobile to Eufaula.

8th. Answering the eighth direct interrogatory. If the rail rates from Louisville, Cincinnati, and St. Louis to Eufaula were permanently increased as stated in this interrogatory, I do not think it would have the effect of inducing the shipment of freights via the Ohio & Mississippi rivers from these points to New Orleans, thence by vessel to Apalachicola and by steamboat to Eufaula, for the reason that the increased expense, such as lighterage, transfer, and wharfage, would more than counterbalance the difference in freight. This is specially so as to classes C, D, & F.

569 9th. Answering the ninth direct interrogatory. I do not see that there is much difference between the circumstances and conditions affecting rail transportation of traffic to and from the towns of Eufaula and Troy. Eufaula has only one line of railway, while Troy has two distinct lines. Eufaula has water advantages, while Troy has none. These water advantages, while there is not much business now done by water, enables us to get better railroad rates than we would otherwise have.

10th. Answering the tenth direct interrogatory. The railroad lines coming into Eufaula are under one management or system, and therefore not competing, but the Chattahoochee River, on which Eufaula is situated, reaches numerous lines of competing railways, the names of which I can not at this time give.

11th. Answering the eleventh direct interrogatory. I can not at this time set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. I did not in my direct examination state that I had received shipments of goods at Eufaula by the Chattahoochee River via Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, and I do not remember that I have ever received any such shipments via Apalachicola, and for this reason I can not further answer this interrogatory.

2nd. Answering the second cross. The route by river from Apalachicola to Eufaula was not the usual route over which shipments were made to me from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities. The proportion of said shipments made to me from said cities by the river route but not by Apalachicola were small in comparison with the shipments that came by the rail route. I can not more definitely state the proportion. It is the exception for shipments to come by the river route instead of by the rail route. The rates by river and rail are now approximately the same, and we usually avoid the river route on account of the difficulty in handling, and on account of the irresponsibility of the parties who handle the river traffic. It is impossible to state specif-

ically how many shipments I receive at Eufaula per month and per year from said cities, for shipments come from said cities nearly every day. We are doing considerable business, and goods are being constantly received and shipped. As stated above, no shipments come to me at Eufaula by the river from Apalachicola, and I have already stated as definitely as I can the amount received by other routes. Eufaula merchants do not ship to any extent from Northeastern cities via Apalachicola and thence by river to Eufaula.

3rd. Answering the third cross. I did not state in my direct examination that I have received at Eufaula any shipments by the Chattahoochee River via Apalachicola from Mobile or New Orleans, and for this reason I can not further answer.

570 4th. Answering the fourth cross. I have stated in my answers to former interrogatories that I did not receive shipments at Eufaula by river via Apalachicola from Mobile or New Orleans, and have also stated that shipments received by me came by other routes, and have also stated that shipments were made to me at Eufaula by other routes from the Northern cities constantly throughout the year. It is impossible for me to state definitely how many of such shipments were so received. Eufaula merchants do not to any extent ship their goods from Mobile and New Orleans via Apalachicola to Eufaula.

5th. Answering the fifth cross. I did not state in my direct examination that I have received shipments from Mobile or New Orleans via Apalachicola and by river to Eufaula, and therefore can not further answer this interrogatory.

6th. Answering the sixth cross. On shipments from Ohio River points via Ohio & Mississippi rivers to New Orleans, and thence by water to Apalachicola and thence by river to Eufaula, a transfer of the goods would have to be made at New Orleans from the Mississippi River steamer or vessel to the Gulf steamer or vessel, and at Apalachicola from the Gulf steamer or vessel to the Chattahoochee River steamer, and these transfers would involve additional expense and delay.

7th. Answering the seventh cross. On shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Apalachicola by river to Eufaula, a transfer of goods would have to be made at Apalachicola from the ocean or Gulf vessel to the river boat, and this would involve expense and delay.

8th. Answering the eighth cross. I can not answer definitely how long it would require for a shipment to be made from Ohio River points to Eufaula by water. Such shipments by the usual rail route usually require from four to five days if in carload lots. It used to require a shipment by steamer from Boston, New York, Philadelphia, and Baltimore to Eufaula about three weeks, and by sail considerably longer. And the usual time for such shipments to Eufaula by the usual rail route, which is by the Ocean Steamship Co. from New York to Savannah, and from Savannah to Eufaula by rail, requires about six days. We have no all-rail route connections from Eufaula to said Eastern cities.

9th. Answering the ninth cross. I think there is a steam vessel running from Apalachicola to Mobile, but I do not think it goes to New Orleans. I do not think any steam vessels run from Apalachicola to Northeastern

cities. I am not informed as to the time required to make the trip in a sailing vessel between Apalachicola and New Orleans in ordinary weather or in bad weather.

10th. Answering the tenth cross. Apalachicola is situated on the Gulf Coast, and a shipment by water from New York, or other Northeastern cities, would have to pass around Florida Keys and the extreme southern point of the peninsular of Florida to reach Apalachicola.

571 11th. Answering the eleventh cross. I do not at this time recall the distance by water from Eufaula to Apalachicola. I do not know the distance by water from Apalachicola to Mobile or New Orleans, nor the distance from Boston, New York, Philadelphia, or Baltimore around Florida Keys to Apalachicola.

12th. Answering the twelfth cross. Boats run twice a week from Eufaula to Apalachicola; I do not know how often boats run from Apalachicola to Mobile or New Orleans; nor how often to Northeastern cities. Boats arrive at Eufaula from Apalachicola, I think, about twice a week.

13th. Answering the thirteenth cross. I did not in my direct examination state that I have shipped cotton or other goods by river to Apalachicola, or by river to Apalachicola and thence by water to Mobile or New Orleans, and I have not in fact made such shipments, and for this reason can not further answer this interrogatory.

14th. Answering the fourteenth cross. I adopt as my answer to this interrogatory the answer I have just made to the 13th cross, and am unable to answer this interrogatory further.

15th. Answering the fifteenth cross. Sailing vessels ply between Apalachicola and other ports. None but light-draft vessels enter the harbor at Apalachicola. Ocean steamers can not enter said harbor. Apalachicola Harbor is used principally for lumber, but I think other shipments are made from there. I do not know whether the bar at Apalachicola was or not destroyed during the war, but I think it was. There is a regular steamer running from Apalachicola to Mobile, but none to other points, so far as I know. I can not speak as to sail vessels, and can name neither the steamer nor the sail vessels. No cotton or other goods, so far as I know, are shipped to Apalachicola for direct export. In speaking of the steamer plying between Apalachicola and Mobile, I only speak from common report, and not from personal knowledge.

16th. Answering the sixteenth cross. I do not think a bill of lading on shipments from Eufaula by river via Apalachicola to New Orleans or any foreign ports could now be procured, but it probably could be to Mobile, if the steamer referred to in the last interrogatory is running between Apalachicola and Mobile. If such bills could be procured they could be negotiated with the banks. I am not sufficiently informed on the subject to state with what certainty such shipments could be counted on as reaching Mobile or New Orleans in time to take such ocean steamer as may have been engaged for them.

17th. Answering the seventeenth cross. There is a marine insurance on cotton and other goods shipped by river to Apalachicola and from Apalachicola to Mobile and New Orleans, but the amount of which I do not know. This may be called extra, inasmuch as there is no insurance on shipments by rail.

18th. Answering the eighteenth cross. The law requires cotton shipped by river to be entirely covered by bagging. This requirement applies to cotton shipped from Eufaula to Apalachicola by river. I do not know the expense of putting on this extra bagging.

572 19th. Answering the nineteenth cross. I have not made any shipments around Florida Keys, and can not answer from experience whether such shipments enhance the rate of insurance. The route around Florida Keys is considered more hazardous than the Atlantic Ocean.

20th. Answering the twentieth cross. I do not know whether Eufaula banks make a difference in discounting drafts where cotton is shipped by river, having never been in that business myself.

21st. Answering the twenty-first cross. I am not informed whether the rules recently adopted by the Liverpool Cotton Association call for the rejection of cotton having the extra bagging required on cotton shipped by river.

22nd. Answering the twenty-second cross. I have no data from which I can estimate with certainty the possible effect that water competition by river from Eufaula to Apalachicola, and thence by water to Mobile or New Orleans or Northeastern cities or Ohio River points, has on rail rates between Eufaula and these cities and points. I can not say that water competition ever at any time, within my knowledge, actually controlled and fixed rail rates. As a matter of general information, rail rates to points having water facilities are usually fixed and made lower on account of such water advantages.

573 *Answer of G. H. Dent to the original and cross interrogatories propounded to him in the above-entitled cause.*

GEORGE H. DENT, being first duly sworn, deposes and says :

1st. In answer to the first direct interrogatory. My name is George H. Dent ; age, 51 years ; residence, Eufaula, Alabama ; occupation, druggist and commission merchant.

2nd. In answer to the second direct interrogatory. I have been engaged in my present occupation since 1868.

3rd. In answer to the third direct interrogatory. I have not received at Eufaula any shipments by river which came via Apalachicola from New York, Boston, Philadelphia, Baltimore, or other Northeastern cities, and therefore can not further answer this interrogatory.

4th. In answer to the fourth direct interrogatory. There are at present about three steamboats running on the Chattahoochee River between Eufaula and Apalachicola and intermediate points. The average time required for a boat to go from Eufaula to Apalachicola and return is about 72 hours.

5th. In answer to the fifth direct interrogatory. The Chattahoochee river is navigable for steamboats between Eufaula and Apalachicola all the year round.

6th. In answer to the sixth direct interrogatory. The effect of the fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola is to fix the rates charged by railroads between Eufaula and New York and other Northeastern cities. I am not sufficiently familiar with shipments between Eufaula and Mobile and New Orleans to answer as to those cities.

7th. In answer to the seventh direct interrogatory. I am not sufficiently informed to state whether the rates now charged between Eufaula and Mobile and New Orleans by rail are higher or lower than they formerly were; nor can I answer the remainder of this interrogatory for the want of sufficient information on the subject.

8th. In answer to the eighth direct interrogatory. If the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, the effect in my opinion would be that all shipments of such cotton and other freights would go by river through Apalachicola, or through other outlets upon the river.

9th. In answer to the ninth direct interrogatory. In the event the rail rates from Cincinnati, Louisville, and St. Louis were permanently increased as specified to Eufaula, the effect in my opinion would be towards inducing the shipment of freight via the Ohio and Mississippi rivers from these points to New Orleans, and thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula. In my opinion the effect would be decidedly in that direction.

574 10th. In answer to the tenth direct interrogatory. The difference between the towns of Eufaula and Troy, with respect to the circumstances and conditions affecting the transportation of traffic to and from those cities, respectively, is that Eufaula is situated upon a navigable river, navigable all the year round, through which shippers can seek relief whenever railroad rates become onerous or burdensome, while Troy is an inland town and has no waterway. The city of Eufaula is also within reach of more railroads than Troy is. Eufaula has an outlet to Americus on the Savannah. Americus & Montgomery Railway, independent of the river, and she is connected with the Eufaula & Ozark Railroad, which runs into the Alabama Midland and the Montgomery & Eufaula to Montgomery with the various connections there, while Troy has only the connections of the Mobile & Girard and the Alabama Midland railroads.

11th. In answer to the eleventh direct interrogatory. I do not know that I can set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or to either of them, or that may be material to the subject of this, my examination, or the matters in question in this cause.

Cross-interrogatories :

1st. Answering the first cross. I did not in my direct examination testify that I received at Eufaula any shipments by the Chattahoochee River via Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Northeastern cities, and therefore can not further answer this cross-interrogatory.

2nd. Answering the second cross. As stated in my answer to the last cross-interrogatory, no shipments were made to me over the route mentioned in this cross-interrogatory, and for that reason I can not further answer this cross-interrogatory as to my own shipments, but, as to shipments by other Eufaula merchants, I can say that they do not ship their goods from Northeastern cities to any extent by the river via Apalachicola to Eufaula.

3rd. In answer to the third cross. I stated in my direct examination that I have not received at Eufaula any shipments by the Chattahoochee

River via Apalachicola from Mobile or New Orleans, and therefore can not further answer this third cross-interrogatory.

4th. Answering the fourth cross. I have already stated that I have received no shipments by river from Apalachicola to Eufaula, and for further answer to said fourth cross-interrogatory I state that I do no business with Mobile or New Orleans, and consequently receive no shipments from these cities by any route. I am not sufficiently informed to state whether other Eufaula merchants ship their goods from the cities named by river via Apalachicola to Eufaula.

5th. Answering fifth cross. I stated in my direct examination
575 tion that I have not received shipments from Mobile or New Orleans via Apalachicola by river to Eufaula, and can not further answer said fifth cross-interrogatory.

6th. Answering sixth cross. The shipments from Ohio River points via the Ohio and Mississippi rivers to New Orleans, thence by water to Apalachicola, and thence by river to Eufaula would have to be transferred at New Orleans from the Mississippi River steamer to the Gulf steamer, or vessel, and at Apalachicola from the Gulf vessel to the Chattahoochee River steamer; but, doubtless, the expense of making these transfers would be taken into consideration in making the through rate.

7th. Answering seventh cross. On shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, and from Mobile and New Orleans via Apalachicola by river to Eufaula, a transfer of goods would have to be made at Apalachicola from the ocean or gulf steamer or vessel to the river steamboat, and these transfers would involve expense and delay.

8th. Answering the eighth cross. I am not sufficiently informed to state how long it would require for a shipment to come from Louisville, Cincinnati, or St. Louis to Eufaula by water. It would require about three days for such shipment to come by rail, or the usual rail route. I am unable to state how long it would require for a shipment to come from Boston, New York, Philadelphia, or Baltimore to Eufaula by water. It would require about 15 days for a such shipment by rail in car lots, and much longer—say three weeks or a month—for shipments by rail in less than carload lots. In my business I have my shipments made from Boston, New York, Baltimore, and Philadelphia by water to Savannah, and by rail to Eufaula, which, I find, consumes much less time than the usual all-rail route.

9th. Answering the ninth cross. I have no definite information as to whether or not steam vessels run from Apalachicola to Mobile or New Orleans or Northeastern cities. I am not sufficiently familiar with the time required for a sailing vessel to make the trip between Apalachicola and New Orleans, to speak definitely, and therefore I can not answer further on that subject.

10th. Answering the tenth cross. Apalachicola is situated on the Gulf Coast, and a shipment by water from New York or Northeastern city would have to pass around Florida Keys and the extreme southern point of the peninsula of Florida in order to reach Apalachicola.

11th. Answering the eleventh cross. I can not state definitely the distance by water from Eufaula to Apalachicola, but think it was about 300

miles. I do not know the distance by water from Apalachicola to Mobile or New Orleans, or around Florida Keys to New York, Boston, Philadelphia, and Baltimore, respectively.

12th. Answering the twelfth cross. Boats run from Eufaula to Apalachicola about three times a week. I do not know how often they
576 run from Apalachicola to Mobile or New Orleans, or to Northeastern cities. Boats arrive at Eufaula from Apalachicola about three times a week.

13th. Answering thirteenth cross. As stated in my direct examination, I have shipped no cotton or other goods by river to Apalachicola or from Apalachicola by water to Mobile or New Orleans, and therefore can not further answer this interrogatory.

14th. Answering the fourteenth cross. I here adopt as my answer to this cross-interrogatory the answer I have just made to the 13th cross-interrogatory.

15th. Answering the fifteenth cross. I can not say of my own knowledge what class of vessels ply between Apalachicola and other ports, but from general information would say that they are principally sailing vessels. Only light-draft vessels, so far as I know, can enter the harbor of Apalachicola. I can not state whether the harbor at Apalachicola is used only for lumber or not. I can not state whether the bar at Apalachicola was destroyed during the war or not. I am unable to state whether there is any regular steamer or sail lines from Apalachicola to Mobile or New Orleans or Northeastern cities, or any of them, or to foreign ports, and therefore can not name the same. I am not informed as to whether any cotton or other goods is shipped to Apalachicola for direct export.

16th. Answering the sixteenth cross. I do not know whether a through bill of lading could be obtained on shipments from Eufaula by river via Apalachicola to Mobile, New Orleans, or foreign ports, I do not know whether such bill of lading can be negotiated with the banks, nor can I state whether the shipments inquired about would with reasonable certainty reach Mobile or New Orleans in time to take such ocean steamer as may have been engaged for them.

17th. Answering the seventeenth cross. I am not sufficiently informed to state definitely whether or not an extra river insurance is required on cotton or other goods shipped by river via Apalachicola to Mobile or New Orleans; and can not state the amount of such extra river insurance, if any.

18th. Answering the eighteenth cross. I can only state from information that the law does require extra bagging to be put on cotton shipped by river. I can only state in the same way that such extra bagging is required on cotton shipped by river from Eufaula to Apalachicola. I have no personal knowledge as to the expense of putting on this extra bagging, and can only state from hearsay that no additional expense is incurred thereby, but probably a small profit made by it.

19th. Answering the nineteenth cross. Shipments around Florida Keys are regarded as extra hazardous, and the rate of insurance is thereby enhanced.

20th. Answering the twentieth cross. I am not informed as to whether Eufaula banks make a difference in discounting drafts where cotton is shipped by river, as I have had no experience in cotton shipping.

577 21st. Answering the twenty-first cross. I am not sufficiently informed to be able to state whether or not the rules recently adopted by the Liverpool Cotton Association call for the rejection of cotton having extra bagging required on cotton shipped by river.

22nd. Answering the twenty-second cross. I have no data upon which I can estimate with certainty the possible effect water competition by river between Eufaula and Apalachicola, thence by water to Mobile or New Orleans, and Northeastern cities, and Ohio River points, has on rail rates between Eufaula and said cities and points. I can not *not* speak from my own knowledge as to whether at any time the water competition by the Chattahoochee River actually controlled or fixed railroad rates.

578 *Answer of R. Q. Edmonson to the direct and cross interrogatories propounded to him in the above-entitled cause.*

R. Q. EDMONSON, being first duly sworn, deposes and says:

1st. In answer to the first direct interrogatory. My name is R. Q. Edmonson; age, 49 years; residence, Eufaula, Alabama; occupation, cotton buyer and commission merchant.

2nd. Answering the second interrogatory. I have been engaged in my present occupation for 23 years.

3rd. In answer to the third direct interrogatory. I have never received at Eufaula any shipments of goods which came by river via Apalachicola from Boston, New York, Philadelphia, Baltimore, or other Eastern cities, except one shipment, which came from Baltimore (guano), amounting to about 200 tons, and this was about 23 years ago.

4th. In answer to the fourth direct interrogatory. I think there are now four steamboats running on the Chattahoochee River between Eufaula and Apalachicola. The average time required for a boat to go from Eufaula to Apalachicola and return is about $3\frac{1}{2}$ or 4 days.

5th. In answer to the fifth direct interrogatory. The Chattahoochee River is navigable for steamboats from Eufaula to Apalachicola at all times.

6th. Answering the sixth direct interrogatory. The fact that the Chattahoochee River is navigable for steamboats between Eufaula and Apalachicola secures us a lower rate of freight by railroads between Eufaula and Mobile, New Orleans, and New York and other Eastern cities, than we would otherwise have.

7th. In answer to the seventh direct interrogatory. If the rail rates on cotton from Eufaula to New Orleans should be permanently increased 18 cents per hundred pounds, and other freights in proportion, it would have no effect towards inducing the shipment of cotton by river to Apalachicola and thence by vessel to New Orleans, for the reason that all cotton is now shipped to the East, and for export out at Savannah. If such an increase was made on other freights, such other freights would be shipped entirely by river.

8th. In answer to the eighth direct interrogatory. If such an increase as is specified in this interrogatory was made in rail rates from Cincinnati, Louisville, and St. Louis to Eufaula, all freight from Eufaula would be shipped from the points named via the Ohio and Mississippi rivers to New

Orleans, thence by vessel to Apalachicola, and by steamboat from Apalachicola to Eufaula up the Chattahoochee River.

9th. In answer to the ninth direct interrogatory. There is a very great difference in the circumstances and conditions affecting the transportation of traffic to and from Eufaula and those affecting Troy, Alabama, owing to the fact that Eufaula has both river and rail transportation, while
579 Troy has only rail transportation. Besides this, about 20 miles above Eufaula is the Savannah, Americus & Montgomery Railway, which we could connect with by boat, and just below Eufaula is the Midland, and just below the Midland is the Louisville & Nashville Railroad, and with both of these railroads we can connect by river. We have an outlet north of us by the S. A. & M. Ry., by water connection, and also the Georgia Midland by the same connection, also with another railroad—the Florida Southern—also a southern outlet by water connection with the L. & N., and also two other railroads connecting at Chattahoochee Junction, Florida, which names I do not now remember, which come out at Fernandino, Florida. Also an outlet to the West by Montgomery to Kansas City, Chicago, St. Louis, etc., while Troy has only the outlets afforded by the Alabama Midland and Georgia Central railroads.

10th. In answer to the tenth direct interrogatory. The different lines of railroad carriers coming into Eufaula are controlled by one system. The Chattahoochee River is the only water line. The part rail and part water lines are from Eufaula to Columbus, Florence on the Chattahoochee River connecting with the S. A. & M. Ry.; Gordon on the Chattahoochee River connecting with the Midland; Chattahoochee connecting with the L. & N. system, and also two roads running out to Fernandino and Jacksonville from Chattahoochee Junction; also the S. & W. R. R. running out from Chattahoochee Junction.

11th. In answer to the eleventh direct interrogatory. There are two lines of transportation from Eufaula to the Gulf of Mexico, one by the Chattahoochee River and the other by rail out by Montgomery, Mobile, and New Orleans.

12th. In answer to the twelfth direct interrogatory. The population of Eufaula and its suburbs is about 7,000.

13th. In answer to the thirteenth direct interrogatory. The cotton annually handled at Eufaula, including that compressed and handled by Eufaula buyers and warehousemen, is between 40,000 and 50,000 bales.

14th. In answer to the fourteenth direct interrogatory. There are at Eufaula two cotton factories, two buggy factories, one bagging factory, one grist mill, sash, door, and blind factory, oil mill, guano factory, gas works, electric light works, all together employing about 500 hands.

15th. In answer to the fifteenth direct interrogatory. I do not know, nor can I set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, my examination, or the matters in question in this cause.

Cross-interrogatories:

1st. Answering the first cross. As stated in my answer to the third direct interrogatory, I received only one shipment of the kind enquired about, and it was from Baltimore, and consisted of two hundred tons of guano. I am unable to give the name of the steamer or vessel or water

580 line on which such shipment was made to Apalachicola, or from Apalachicola to Eufaula by the Chattahoochee River. I am unable to attach to my answer a copy of the receipt given on payment of the freight by or for me, such receipt having been long since destroyed by fire.

2nd. In answer to the second cross. I am not nor have I ever been engaged in the merchandising business in Eufaula, and for that reason have not been in the habit of receiving shipment' to that city over any route, and have received none except as is stated in my answer to the third direct interrogatory. I am unable to state to what extent the Eufaula merchants ship their goods from Northeastern cities by river via Apalachicola, but I do know that some shipments are made by them in this way.

3rd. Answering the third cross. I have already substantially answered this interrogatory in my answer to the first cross-interrogatory, and am unable to make further answer thereto.

4th. Answering the fourth cross. I adopt as my answer to this interrogatory the answer already made to the first and second cross-interrogatories, and am unable to make further answer thereto.

5th. Answering fifth cross. I have received no such shipments as are called for by this interrogatory; therefore I can make no further answer thereto.

6th. Answering the sixth cross. On shipments from Ohio River points via the Ohio and Mississippi rivers to New Orleans, thence by water to Apalachicola, and thence by river to Eufaula, a transfer of the goods would have to be made at New Orleans from the Mississippi River boat to the Gulf vessel, and at Apalachicola from the Gulf vessel to the Chattahoochee River boat, and these transfers would involve additional expense and delay.

7th. Answering the seventh cross. On shipments from Boston, New York, Philadelphia, Baltimore, and other Northeastern cities, or from Mobile and New Orleans via Apalachicola by river to Eufaula, a transfer of the goods would have to be made at Apalachicola from the ocean or Gulf vessel to the river boat, and this would involve expense and delay.

8th. Answering the eighth cross. It would require from two to three weeks for a shipment to be made from Louisville, Cincinnati, and St. Louis, or other Ohio River points, to Eufaula by water, and from five to ten days by rail or the usual rail route. A shipment of goods from New York, Boston, Philadelphia, Baltimore, to Eufaula by water would take from ten to fifteen days by Fernandino, Florida, Jacksonville, or Brunswick, and three weeks, coming by Apalachicola. From these points to Eufaula by rail would require about ten days for such shipments. In speaking of shipments, I refer entirely to bagging, ties, etc., not having had any experience in the shipment of merchandise.

9th. Answering ninth cross. Steam vessels do run from Apalachicola to Mobile or New Orleans and to Northeastern cities.

581 I am not sufficiently informed to undertake to state how long it requires a sailing vessel to make the trip between Apalachicola and New Orleans either in good or bad weather.

10th. Answering tenth cross. Apalachicola is situated on the Gulf Coast, and a shipment by water from New York, or other Northeastern city, would have to pass around Florida Keys and the extreme southern point of the peninsula of Florida in order to reach Apalachicola.

11th. Answering eleventh cross. The distance by water from Eufaula to Apalachicola is about 250 miles. I do not know the distance by water from Apalachicola to Mobile or New Orleans, nor to Boston, New York, or other Northeastern cities around Florida Keys.

12th. Answering twelfth cross. Boats run from Eufaula to Apalachicola four times a week. I do not know how often they run from Apalachicola to Mobile or New Orleans, or how often to Northeastern cities. Boats arrive at Eufaula from Apalachicola about four times a week.

13th. Answering the thirteenth cross. I have never shipped cotton or goods by river to Apalachicola, or by river to Apalachicola and thence by water to Mobile or New Orleans, and for that reason can not further answer this interrogatory.

14th. Answering the fourteenth cross. I have never made any shipment by river to Apalachicola, or by water to Mobile or New Orleans, and for that reason can not further answer this interrogatory as to shipments by river; nor have I made any shipments from Eufaula to Mobile or New Orleans by any other route or routes.

15th. Answering the fifteenth cross. I can not state what class of vessels ply between Apalachicola and other ports, nor whether any but light-draft vessels enter the harbor at Apalachicola; nor whether Apalachicola Harbor is only used for lumber, but think a great deal of other freights is shipped through Apalachicola. I can not state whether the bar at Apalachicola was destroyed during the war or not. I can not state of my own knowledge whether there are any regular steamer or sail lines between Apalachicola and Mobile or New Orleans and Northeastern cities, or to any of them, or to any foreign port, and therefore can not name such line or lines. No cotton or other goods, so far as I know, is shipped to Apalachicola for direct export.

16th. Answering the sixteenth cross. A through bill of lading on shipments from Eufaula by river via to Apalachicola, Mobile, or New Orleans, or to foreign ports, could be procured; and such bill could be negotiated with the banks. Such shipments could be put on ocean steamers at Apalachicola, or sent to Mobile or New Orleans, with reasonable certainty of their reaching those cities in time to take such ocean steamer as may have been engaged.

582 17th. Answering seventeenth cross. There is an extra river insurance on cotton shipped by river and also on other goods shipped by river from Eufaula to Apalachicola and from Apalachicola to Mobile or New Orleans. I can not state the amount of this extra insurance.

18th. Answering eighteenth cross. The law does require extra bagging to be put on cotton shipped by river; the requirement is that the bale shall be covered all over with bagging. Such extra bagging is required, on shipment of cotton from Eufaula to Apalachicola by river. The expense of putting on this extra bagging would amount (including the labor) to about fifteen cents per bale.

19th. Answering the nineteenth cross. Shipments around Florida Keys are regarded as extra hazardous, and enhance the rate of insurance.

20th. Answering the twentieth cross. Eufaula banks, so far as I know, make no difference in discounting drafts, where cotton is shipped by river.

21st. Answering the twenty-first cross. The rules recently adopted by

the Liverpool Cotton Association call for the rejection of cotton having on the extra bagging required on cotton shipped by river, or for a discount in price.

22nd. Answering the twenty-second cross. I can not say that I have any data upon which I can estimate with certainty the possible effect water competition by the river between Eufaula and Apalachicola, and thence by water to Mobile, New Orleans, and Northeastern cities and Ohio River points, has on rail rates between Eufaula and these points. I can not say that this water competition has at any time controlled and actually fixed these rail rates within my knowledge; but I do know that the water route to Chattahoochee Junction has had the effect of controlling and fixing rail rates; but the data for this is not called for by the interrogatory.

583 *Answers of Lee McLendon to the direct and cross interrogatories propounded to him in the above-entitled cause.*

LEE McLENDON, being duly sworn, deposes and says:

1st. Answering the 1st direct interrogatory. My name is Lee McLendon; age, 27 years; residence, Montgomery, Ala.; occupation, division freight & passenger agent of the Alabama Midland Railway Company.

2nd. Answering the 2nd direct interrogatory. I have been connected with the railroad traffic business in the United States for about 12 years. I have filled various positions in the general freight and passenger offices of the Plant System; have been travelling freight agent of the Plant System until November 1st, 1892, at which time I assumed my present duties. From May, 1891, to June, 1892, I was travelling freight and passenger agent of the Savannah, Americus & Montgomery Railway. All the balance of the 12 years, excepting the time of my connection with the Savannah, Americus & Montgomery Railway, I was with the Plant System.

3rd. Answering the 3rd direct interrogatory. The tariff or tariffs showing the rates charged by the Alabama Midland Railway Company are hereto attached, marked Exhibit No. 1.

4th. Answering the 4th direct interrogatory. The local rates shown in said tariff schedule are, in my opinion, reasonably low.

5th. Answering the 5th direct interrogatory. The local rates as charged in Alabama have been approved by the railroad commission of this State, and I attach to my answer to this interrogatory the papers showing the action of such commission, marked Exhibit No. 2.

6th. Answering the 6th direct interrogatory. A copy of the Alabama State laws, showing the powers of the railroad commission of the State, are attached hereto as an exhibit, and marked Exhibit No. 3.

7th. Answering the 7th direct interrogatory. Such of the local rates as are charged in Georgia have been approved by the railroad commission of that State, and I attach hereto a paper showing the action of said commission; said paper being the 21st Annual Report of the Railroad Commission of Georgia, see pages 38, 39, & 55; the first two numbered pages showing the standard freight tariff of the said commission and the last numbered page showing the percentages of that said standard tariff which the Alabama Midland Railway Company is permitted to charge. This is marked Exhibit No. 4.

8th. Answering the 8th direct interrogatory. I attach hereto a copy of the 21st Annual Report of the Georgia Railroad Commission, which includes extracts from the Georgia State laws governing the powers of the railroad commission of that State in making rates of freight, which laws will be found on pages 121, 122, 123, 124, 125, etc., of said report.

This as Exhibit No. 5.

584 9th. Answering the 9th direct interrogatory. The standard tariffs of the railroad commission of Georgia will also be found in the 21st annual report of the commission on pages 38 & 39 of said report, already attached hereto.

10th. Answering 10th direct interrogatory. The gross earnings of the Alabama Midland Railway Company for the fiscal year, July, 1892, to June, 1893, inclusive, were \$490,767.77. The operating expenses of said road during that period were \$568,262.34; deficit, \$77,564.57.

11th. Answering the 11th direct interrogatory. To the best of my knowledge and belief the road has been operated since June, 1890, skillfully, economically, and honestly.

12th. Answering the 12th direct interrogatory. For the purpose of securing traffic for said railway, we have employed soliciting agents at whatever points freight has been offered for transportation in sufficient volume for it to be remunerative for the investment, and from which points we have been a reasonable route. We have used all methods usually pursued by railroads in the procurement of a just and fair proportion of competitive traffic.

13th. Answering the 13th direct interrogatory. According to the reports of our accounting department the revenue derived from noncompetitive traffic during the fiscal year ending June 30, 1893, was \$174,588.43; from competitive freight traffic during the same period, \$152,862.33.

14th. Answering the 14th direct interrogatory. According to the reports of our accounting department the revenue derived by the Alabama Midland Railway Co. during the fiscal year, July, '92, to June, '93, inclusive, from competitive traffic coming from the East, destined to Montgomery and points beyond, \$127,032.31.

15th. Answering the 15th direct interrogatory. According to the reports of our accounting department the revenue derived by the Alabama Midland Ry. Co., for the fiscal year, July, '92, to June, '93, inclusive, from traffic from the East destined to local stations, including Troy, Ozark, when the rates from the East to these points were higher than the rates from the East to Montgomery, \$35,511.73.

16th. Answering the 16th direct interrogatory. According to the reports of our accounting department the Alabama Midland Ry. Co. would have derived during the fiscal year, July, '92, to June, '93, from traffic coming East destined to local stations, including Troy and Ozark, if we had been compelled to accept from the East to these stations the proportion of rates which were accepted from the East to Montgomery, \$28,062.91.

17th. Answering the 17th direct interrogatory. As evidence of the fact that our rates of freight were reasonable, I cite the fact of the recent authority of the Alabama railroad commission to increase the rates of freight on articles classified under the heading of B, C, D, & F, also fertilizers in carload lots, and attach hereto, as a part of my answer to the

17th interrogatory, a comparison of the rates as charged prior to Oct. 20th, 1894, at which time the increased rates allowed by the commission became effective. This is marked Ex'bit No. 7.

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Cross-interrogatories :

1st. Answering the 1st cross. I did not in my direct examination give the through rates in effect March 1st, 1894, on classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, & F, from Louisville, Cincinnati, and St. Louis, respectively, to Troy, and for that reason do not further answer this cross-interrogatory.

2nd. Answering the 2nd cross. I do not know how long prior to March 1st, 1894, the rates inquired about in the 1st cross-interrogatory, from Louisville, Cincinnati, & St. Louis to Troy and Montgomery or to Mobile, have been in effect. I am unable to give the rates which immediately preceded said rates. The rates from these cities to Troy and Montgomery and from the East to Troy and Montgomery were at the time of the demoralization of the rates from the East and from the West to what is known as the Southeastern territory were reduced considerably. This was in June or July, 1894. The said reduced rates from the East and West to Troy and from the East to Montgomery and Mobile are given in Exhibit No. 8, hereto attached as a part of this answer. The rates in force from the East and West to Troy and from the East to Montgomery and Mobile immediately preceding said reductions are given in the statement hereto attached, marked Exhibit No. 8, and made a part of this answer. The length of time said rates from the East and West to Troy and from the East to Montgomery and Mobile remained in effect is shown in Exhibits No. 8, hereto attached.

3rd. Answering the 3rd cross. The distance via the L. & N. Rd. from Louisville to Montgomery is 490 miles; from Cincinnati to Montgomery, 600 miles; from St. Louis to Montgomery is 624 miles. The distance from Montgomery over the Alabama Midland to Troy is 52 miles, and over the Georgia Central it is 71 miles. I do not know what rate per ton per mile is yielded by the proportion of the through rate from Louisville, Cincinnati, and St. Louis, through Montgomery, to Troy, charged for the haul to Troy. It would be impracticable to give the rate per ton per mile between any two points on the line of the Alabama Midland Railway. Nor am I able to state the rate per ton per mile yielded by the through rate from those cities, respectively, to Montgomery, for the reason that I have no control over those rates; neither have I access to the records which would enable me to answer the question. The rate per ton per mile on through freights from Montgomery to Troy, when from Louisville, Cincinnati, and St. Louis, through Montgomery, to Troy, is the same as the rate per ton per mile accruing on similar freights from Montgomery to Troy, when such freights originate at Montgomery destined for Troy.

4th. Answering the 4th cross. On through shipments from Louisville, Cincinnati, and St. Louis, via Montgomery, to Troy, on the Alabama Midland Railway, some of said shipments are transported in through cars from point of shipment to the destination and some are transferred at Montgomery to cars on the Alabama Midland road. I do not know about the transfer of cars on the line of the Georgia Central. The extra expense

incurred at Montgomery arises from the cost of terminal facilities, tracks, warehouses, platforms, clerical force, general station supplies, cost of motive power and maintaining same, train crews, engine men, and firemen, and other incidental expenses. It is impracticable for me to state what such expense amounts to per car or per 100 lbs. on traffic. I can not give an accurate comparison of the figures as to the cost of the terminal expenses at Montgomery and Troy on through shipments from Louisville, Cincinnati, and St. Louis, via Montgomery, to Troy, on the Alabama Midland Railway.

5th. Answering the 5th cross. In stating in my direct examination that the proportion of the through rates received by the Alabama Midland road for transportation from Montgomery to Troy were reasonable, I considered them both as local rates and as parts of through rates. The cost of handling local freight is greater per ton per mile than the cost of handling through freight. The proportion of the through rate received by said road for the service of transportation from Montgomery to Troy is the same as the local rate from Montgomery to Troy. In the construction of rates to Troy from the West, Montgomery is regarded as a basing point.

6th. Answering the 6th cross. So far as my knowledge goes of the actions of the railroad commission of Alabama, I do not think that they undertake to prescribe or regulate the through rates on interstate traffic or the proportions of said through rates charged for that part of through hauls of said traffic which may be in this State. I am not posted as to the actions of the Georgia railroad commission in this respect.

7th. Answering the 7th cross. My statement of the estimate in my direct examination of the revenue that would have been, in my opinion, derived by the Alabama Midland Railway Co. during the fiscal year from July, '92, to June, '93, inclusive, from traffic coming from the East destined to local stations on said railway if said company had been compelled to accept to those stations proportions of rates not higher than the proportions of rates which it accepts on shipments to Montgomery, is based upon information from the accounting department of the Alabama Midland Railway Company. In compiling these figures I do not know whether a reduction of the rates would increase the traffic as considered or not. I am not now prepared to state whether a proportion of said through rates from the East to Montgomery charged by the Alabama Midland Railway for its portion of the haul to Montgomery pays anything, or if so, what, above operating expenses, or above operating expenses and fixed charges.

8th. Answering the 8th cross. According to reports of our accounting department the revenue derived during the fiscal year, July, '92, to June, '93, inclusive, by the Alabama Midland Railway Co. from traffic coming from the East destined to all stations except to Montgomery, when the rates to those stations are higher than the rates from the East to Montgomery, \$35,511.33. We have no local stations to which rates from the East are lower than the rates from the East to Montgomery. I have not the information at hand to enable me to state the amount of revenue that was derived by said company during said year from traffic coming from the East and destined to Montgomery and not to points beyond. I have

not the information at hand necessary for me to give similar statements of amounts of revenue as above testified about for the fiscal years, July, '91, to June, '92, and from July, '93, to June, '94.

587 9th. Answering the 9th cross. The revenue of railroads generally throughout the country has fallen off materially during the last two or three years because of the depressed financial condition of the country. I am unable to state whether the revenue of the Alabama Midland Railway Company for the fiscal year, July, '92, to June, '93, was decreased by cut rates and rate wars. The fiscal year July, '92, to June, '93, was an exceptionally bad year as regards the Alabama Midland Railway Co.

10th. To Mr. Dunham only.

11th. Answering the 11th cross. I have no recollection since my connection with the Alabama Midland Railway Co. of any shipments of cotton from Troy to New Orleans via Montgomery, and for this reason I can not further answer this 11th cross-interrogatory.

Exhibit 1 to deposition of Lee McLendon.

Alabama Midland Railway Company.—Tariff of local freight rates between all stations, except between stations both of which are in Georgia.—Taking effect September 1st, 1891.

Distances.	Per one hundred pounds.														Per ton, 2,000 lbs.	Per 100 pounds.		Per ton, 2,000 lbs.	Per 100 lbs.	Coal and coke, C. L. minimum weight marked capacity of car.	Ice, C. L.	Lumber, logs, tan bark, staves, and heading, C. L. 24,000 lbs.	Livestock, released, C. L. 20,000 lbs. maximum weight.	Sawdust, wood (for fuel), and staves, C. L. minimum weight, marked capacity of car.			
	1	2	3	4	5	6	A	B	C	D	E	H	F	I		J	L								M	N	Bbls., half bbls., and kegs, empty, except ale and beer.	Brick, common, C. L. 30,000 lbs. min.	Cotton seed, cotton-seed hulls, and fertilizers, C. L. 12 tons minimum.	Cotton seed hulls and fertilizers, C. L. C. L.	Per car.	Per 100 lbs.
For 10 miles and under.....	22	19	17	16	14	12	12	10	7	6	12	14	14	10	8				10	34	80	5	60	4	3	12.00	24
15 " " over 10 " "	25	22	20	18	16	13	13	11	8	7	13	16	16	11	10				11	34	80	5	70	4	3	14.00	24
20 " " " " " "	28	24	22	20	18	14	14	12	9	8	14	18	18	12	12				12	34	90	6	75	5	3	16.00	24
25 " " " " " "	30	26	24	22	20	15	15	13	10	9	15	20	20	13	14				12	34	100	6	80	5	3	18.00	24
30 " " " " " "	32	28	26	24	22	16	16	14	11	10	16	21	22	14	16				13	34	110	6	85	5	3	20.00	24
35 " " " " " "	34	30	28	26	24	17	17	15	11	10	17	22	22	15	18				14	34	120	7	90	5	3	22.00	24
40 " " " " " "	36	32	30	28	26	18	18	16	12	11	18	23	24	16	20				15	34	130	7	95	5	3	24.00	24
45 " " " " " "	38	34	32	30	28	19	19	17	12	11	19	24	24	17	22				16	34	140	8	100	5	3	26.00	24
50 " " " " " "	40	36	34	32	30	20	20	18	13	12	20	25	26	18	23				17	34	150	8	105	5	3	28.00	24
55 " " " " " "	42	38	36	34	32	21	21	19	14	13	21	26	26	19	23				18	34	160	8	110	5	3	30.00	24
60 " " " " " "	44	40	37	35	33	22	22	20	15	14	22	27	28	20	24				19	4	170	8	115	5	3	32.00	24
65 " " " " " "	46	42	39	37	35	23	23	21	16	15	23	28	28	21	26				20	4	180	8	120	5	3	34.00	24
70 " " " " " "	48	44	41	39	37	24	24	22	17	16	24	29	28	22	28				21	4	190	8	125	5	3	36.00	24
75 " " " " " "	50	46	43	41	39	25	25	23	18	17	25	30	29	22	30				22	4	200	8	130	5	3		24
80 " " " " " "	52	48	45	43	41	26	26	24	19	18	26	31	30	23	31				23	5	210	8	135	5	3		24
85 " " " " " "	54	50	47	45	43	27	27	25	20	19	27	32	31	24	32				24	5	220	9	140	5	3		24
90 " " " " " "	56	52	49	47	45	28	28	26	21	20	28	32	32	25	33				25	5	230	9	145	5	3		24
95 " " " " " "	58	54	51	49	47	29	29	27	22	21	29	33	32	26	34				26	6	240	9	150	5	3		24
100 " " " " " "	60	56	53	51	49	30	30	28	23	22	30	34	33	27	35				27	6	250	10	155	5	3		24
105 " " " " " "	62	58	55	53	51	31	31	29	24	23	31	35	34	28	36				28	6	260	10	160	5	3		24
110 " " " " " "	64	60	57	55	53	32	32	30	25	24	32	36	35	29	37				29	6	270	10	165	5	3		24

130	130	66	56	48	44	38	32	32	27	16	15	32	38	32	29	31	23	15	13	27	6	165	10	135	10	7	37.00	6
140	130	67	57	49	45	39	34	34	28	17	16	34	39	32	29	31	23	16	14	28	7	170	10	140	11	7	38.00	6
150	140	68	58	50	46	40	36	36	29	17	16	35	40	33	27	32	25	17	14	28	7	170	10	150	11	7	39.00	6
160	150	69	59	51	47	41	37	37	30	17	16	36	41	34	28	32	26	18	14	29	8	175	10	160	12	8	40.00	7
170	160	70	60	52	48	42	38	38	31	17	16	38	42	34	29	32	27	19	15	29	8	175	10	170	12	8	41.00	7
180	170	71	61	53	49	43	39	39	32	17	16	39	43	34	29	33	28	20	15	30	8	180	11	180	13	8	42.00	7
190	180	72	62	54	50	44	40	40	33	17	16	40	44	34	29	33	28	20	15	30	8	180	11	180	13	8	42.00	7

Exhibit 1 to deposition of Lee McLendon—Continued.

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Plant system.—Alabama Midland Railway Company—Tariff of local freight rates between all stations, except between stations both of which are in Georgia.—Taking effect Oct. 20, 1894.

[illegible]

110	..	100	62	54	46	42	35	28	28	23	22	19	28	35	44	25	31	21	13	13	12	22	21	00	0	1.80	10	1.25	9	35.00	1.75
120	..	110	64	55	47	44	38	32	32	23	22	19	32	38	44	26	31	23	15	13	25	24	22	50	6	2.00	10	1.30	10	36.00	1.75
130	..	120	66	56	48	45	39	34	34	23	22	19	34	39	44	27	31	24	16	14	27	24	24	00	6	2.00	10	1.40	11	37.00	1.75
140	..	130	67	57	49	46	40	36	36	23	22	19	36	40	44	27	32	25	17	14	27	24	24	00	7	2.00	10	1.50	11	38.00	1.75
150	..	140	68	58	50	47	41	37	37	24	23	20	37	41	46	28	32	26	18	14	28	25	25	50	7	2.10	11	1.60	12	40.00	2.00
160	..	150	69	59	51	48	42	38	38	25	24	20	38	42	48	28	32	27	19	15	28	27	27	00	8	2.20	12	1.70	12	41.00	2.00
170	..	160	70	60	52	49	43	39	39	26	25	20	39	43	50	29	33	28	20	15	30	28	28	50	8	2.30	12	1.80	13	42.00	2.00
180	..	170	71	61	53	49	43	39	39	26	25	20	39	43	50	29	33	28	20	15	30	28	28	50	8	2.30	12	1.80	13	42.00	2.00
190	..	180	72	62	54	50	44	40	40	27	26	20	40	44	52	29	33	28	20	15	30	28	28	50	8	2.30	12	1.80	13	42.00	2.00

Between Ozark, Ala., and —	Per one hundred pounds.												Per bbl.	Per 100 pounds.				Per 100 lbs.	Per ton.	Cotton seed, cotton-seed hulls, and fertilizers, cartload 12 tons minimum.	Cotton seed, cotton-seed hulls, and fertilizers, 1, C. L.	Coal and coke, cartload minimum weight marked capacity of car.	Ice, cartload	Lumber, logs, tan bark, staves, and heading, cartload 30,000 lbs. minimum.	Live stock, released, cartload 20,000 lbs. minimum.	Per car.	Per cord.
	1	2	3	4	5	6	A	B	C	D	E	H		F	I	J	L											M	N	Barrels, half barrels, and kegs, empty, except ale and beer, 1, C. L.	Barrels, half barrels, and kegs, empty, except ale and beer, cartload 15,000 lbs. minimum.	Brick, common, C. L. 30,000 lbs. minimum.
Montgomery.....Ala.	58	44	40	32	26	23	22	22	19	26	32	44	24	30	19	11	11	21	21.00	5	1.75	9	1.20	6	33.00	1.50	
Durand.....	54	50	42	38	31	25	22	21	18	25	31	42	23	30	17	11	10	18	19.00	5	1.70	9	1.15	6	31.00	1.50	
Stowdown.....	54	50	42	38	31	25	22	21	18	25	31	42	23	30	17	11	10	18	19.00	5	1.70	9	1.15	6	31.00	1.50	
Tharin.....	52	48	41	37	30	25	22	21	18	25	30	42	23	30	16	11	10	18	18.00	5	1.70	9	1.10	6	30.00	1.50	
Le Grand.....	50	46	40	36	30	24	22	21	18	24	30	41	22	29	15	10	9	18	17.00	4	1.65	9	1.05	6	29.00	1.50	
Sprague Junction.....	50	46	40	36	30	24	22	21	18	24	30	41	22	29	15	10	9	18	17.00	4	1.65	9	1.05	6	29.00	1.50	
Ramer.....	48	44	39	35	29	24	21	20	17	24	29	40	22	28	13	10	8	16	16.50	4	1.65	9	1.00	6	28.00	1.00	
Grady.....	46	42	38	34	28	23	21	20	17	23	28	39	21	26	13	10	8	17	16.50	4	1.60	8	1.00	6	27.00	1.00	
Kents.....	44	40	37	33	27	22	20	19	16	22	27	38	20	24	12	9	8	16	16.00	4	1.60	8	.95	6	26.00	1.00	
Shady Grove.....	42	38	35	32	26	21	20	19	16	21	26	37	19	23	11	9	7	16	15.00	3	1.60	8	.95	6	25.00	1.00	
Ausley.....	42	38	35	32	26	21	20	19	16	21	26	37	19	23	11	9	7	16	15.00	3	1.60	8	.95	6	25.00	1.00	
Youngbloods.....	40	36	34	31	25	20	19	18	15	20	25	36	18	22	10	9	7	15	15.00	3	1.60	8	.90	6	24.00	.85	
Troy.....	36	32	30	28	23	18	17	16	13	18	23	32	16	20	9	8	6	15	13.50	3	1.40	7	.85	6	22.00	.85	
Banks.....	32	28	26	24	21	16	15	14	11	16	21	28	14	16	8	7	6	13	12.00	3	1.30	7	.80	5	20.00	.70	
Pronto.....	32	28	26	24	21	16	15	14	11	16	21	28	14	16	8	7	6	13	12.00	3	1.30	7	.80	5	20.00	.70	
Brumledge.....	30	26	24	22	20	15	14	13	10	15	20	26	13	14	7	6	5	12	12.00	3	1.20	6	.75	5	18.00	.70	
Tennille.....	28	24	22	20	18	14	13	12	9	14	18	24	12	12	6	5	4	11	10.50	3	1.20	6	.75	5	18.00	.70	
Aristo.....	25	22	20	18	16	13	12	11	8	13	16	22	11	10	5	5	4	10	9.00	3	1.00	6	.70	4	14.00	.70	
Billards.....	22	19	17	16	14	12	12	10	7	12	14	20	10	8	5	5	4	10	6.00	3	1.00	6	.60	4	12.00	.70	
Evell.....	22	19	17	16	14	12	12	10	7	12	14	20	10	8	5	5	4	10	6.00	3	1.00	6	.60	4	12.00	.70	
Newton.....	25	22	20	18	16	13	12	11	8	13	16	22	11	10	5	5	4	11	9.00	3	1.00	6	.70	4	14.00	.70	
Puckard.....	25	22	20	18	16	13	12	11	8	13	16	22	11	10	5	5	4	11	9.00	3	1.00	6	.70	4	14.00	.70	
Midland City.....	28	24	22	20	18	14	13	12	10	15	20	26	13	14	7	6	5	12	10.50	3	1.20	6	.75	5	18.00	.70	
Abbeyville Junction.....	30	26	24	22	20	15	14	13	10	15	20	26	13	14	7	6	5	12	12.00	3	1.20	6	.75	5	18.00	.70	
Dothan.....	32	28	26	24	21	16	15	14	11	16	21	28	14	16	8	7	6	13	12.00	3	1.30	7	.80	6	20.00	.70	

Cowarts	34	30	28	26	22	17	17	16	15	12	17	22	30	15	13	9	8	6	14	13.50	3	1.30	74	89	5	6	20.00	85
Ashford	36	32	30	28	24	19	18	17	16	14	19	24	32	16	13.50	9	8	7	15	15.00	3	1.40	76	85	6	6	22.00	85
Fancy	38	34	32	30	24	19	18	17	16	13	19	24	34	17	15	10	9	7	15	15.00	3	1.50	8	85	6	6	24.00	85
Gordon	40	36	34	32	25	20	19	18	17	15	20	25	34	18	15	10	9	7	16	15.00	3	1.60	8	85	6	6	25.00	1.00
Alaga	42	38	35	32	26	21	21	20	19	16	21	26	37	19	16	15	11	9	16	15.00	3	1.60	8	85	6	6	25.00	1.00
Saffold	42	38	35	32	26	21	21	20	19	16	21	26	37	19	16	15	11	9	16	15.00	3	1.60	8	85	6	6	25.00	1.00
Josephine	42	38	35	32	26	21	21	20	19	16	21	26	37	19	16	15	11	9	16	15.00	3	1.60	8	85	6	6	25.00	1.00
Jakin	44	40	37	35	27	22	22	21	20	17	23	28	39	21	17	16.50	10	8	17	16.50	4	1.60	8	85	7	6	27.00	1.00
Donelsonville	46	42	38	34	28	23	23	22	21	18	24	30	41	22	18	17	10	9	18	17.00	4	1.65	9	1.00	7	6	28.00	1.00
Iron City	48	44	39	35	29	24	24	23	22	19	24	30	41	22	18	17	10	9	18	17.00	4	1.65	9	1.05	7	6	29.00	1.50
Brinson	50	46	40	36	30	24	24	23	22	19	24	30	41	22	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Bainbridge	54	50	46	40	36	30	24	24	23	22	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Ala	52	48	41	37	30	25	25	24	23	21	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Sellers	54	50	42	38	31	25	25	24	23	21	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Strata	54	50	42	38	31	25	25	24	23	21	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Nafela	54	50	42	38	31	25	25	24	23	21	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
La Pine	54	50	42	38	31	25	25	24	23	21	18	25	31	23	18	17	10	9	18	17.00	4	1.70	9	1.15	8	6	31.00	1.50
Bradleyton	56	51	43	39	32	26	26	25	24	22	19	26	32	24	19	19	11	11	21	21.00	5	1.75	9	1.20	8	6	33.00	1.50
Petty	58	52	44	40	32	26	26	25	24	22	19	26	32	24	19	19	11	11	21	21.00	5	1.75	9	1.20	8	6	33.00	1.50
Pattaburg	60	53	45	41	33	27	27	26	25	23	20	33	41	25	21	21	12	12	21	21.00	6	1.80	10	1.25	9	6	34.00	1.50
Laverne	62	54	46	42	35	28	28	27	26	24	21	35	44	25	22	22	13	13	22	21.00	6	1.80	10	1.25	9	6	35.00	1.75

* Freight for stations marked thus, must be prepaid.

Tariff of local freight rates between Troy, Ala., and stations on Alabama Midland Railway.

Between Troy, Ala., and—	Per one hundred pounds.										Per bbl.	Per 100 pounds.										Per 100 lbs.	Per ton.	Per 100 lbs.	Per car.	Per cord.				
	1	2	3	4	5	6	A	B	C	D		E	F	G	H	I	J	K	L	M	N						Barrels, half barrels, and kegs, empty, except ale and beer, L. C. L.	Barrels, half barrels, and kegs, empty, 15,000 lbs. minimum.	Brick, common, C. L. 30,000 lbs. minimum.	Cotton seed, cotton-seed hulls, and fertilizers, L. C. L.	Cotton seed, cotton-seed hulls, and fertilizers, L. C. L.	Coal and coke, carload minimum weight marked capacity of car.	Ice, carload.	Lumber, logs, tan bark, staves, and heading, carload 30,000 lbs. minimum.	Live stock, released, carload 20,000 lbs. minimum.	Wood for fuel, minimum carload 8 cords.
Montgomery..... Ala.	42	38	35	32	26	21	20	19	18	17	16	21	26	37	19	23	11	9	7	16	15.00	3	1.00	84	85	6	6	25.00	1.00	1.00
Durham.....	38	34	32	30	24	19	18	17	16	15	14	19	24	34	17	22	10	8	7	15	15.00	3	1.50	8	85	6	6	23.00	.85	.85
Shawdon.....	38	34	32	30	24	19	18	17	16	15	14	19	24	34	17	22	10	8	7	15	15.00	3	1.50	8	85	6	6	23.00	.85	.85
Tharsh.....	36	32	30	28	23	18	17	16	15	14	13	18	23	32	16	20	9	8	6	15	13.50	3	1.40	7	85	6	6	22.00	.85	.85
Le Grand.....	34	30	28	26	22	17	17	16	15	14	13	17	22	30	15	18	9	7	6	14	13.50	3	1.30	7	80	5	6	20.00	.85	.85
Sprague Junction.....	34	30	28	26	22	17	17	16	15	14	13	17	22	30	15	18	9	7	6	14	13.50	3	1.30	7	80	5	6	20.00	.85	.85
Ramer.....	30	26	24	22	20	15	15	14	13	10	15	20	26	33	14	7	6	5	5	12	12.00	3	1.20	6	75	5	5	18.00	.70	.70
Grady.....	30	26	24	22	20	15	15	14	13	10	15	20	26	33	14	7	6	5	5	12	12.00	3	1.20	6	75	5	5	18.00	.70	.70
Kent's.....	28	24	22	20	18	14	14	13	12	9	14	18	24	32	13	14	7	6	5	12	10.50	3	1.00	6	70	4	4	14.00	.70	.70
Shady Grove.....	25	22	20	18	16	13	13	12	11	8	13	16	22	31	10	5	5	4	4	11	9.00	3	1.00	6	70	4	4	14.00	.70	.70
Analee.....	25	22	20	18	16	13	13	12	11	8	13	16	22	31	10	5	5	4	4	11	9.00	3	1.00	6	70	4	4	14.00	.70	.70
Youngbloods.....	22	19	17	16	14	12	12	10	10	7	12	14	20	10	8	5	5	4	4	10	6.00	3	1.00	6	60	4	4	12.00	.70	.70
Banks.....	22	19	17	16	14	12	12	10	10	7	12	14	20	10	8	5	5	4	4	10	6.00	3	1.00	6	60	4	4	12.00	.70	.70
Pronto.....	25	22	20	18	16	13	13	12	11	8	13	16	22	31	10	5	5	4	4	11	9.00	3	1.00	6	70	4	4	14.00	.70	.70
Brundidge.....	25	22	20	18	16	13	13	12	11	8	13	16	22	31	10	5	5	4	4	11	9.00	3	1.00	6	70	4	4	14.00	.70	.70
Tennille.....	25	22	20	18	16	13	13	12	11	8	13	16	22	31	10	5	5	4	4	11	9.00	3	1.00	6	70	4	4	14.00	.70	.70
Aristotle.....	32	28	26	24	21	16	16	15	14	13	10	15	20	26	13	14	7	6	5	12	12.00	3	1.20	6	75	5	5	16.00	.70	.70
Dillard's.....	34	30	28	26	22	17	17	16	15	14	11	16	21	28	14	16	8	7	6	13	12.00	3	1.20	6	75	5	5	16.00	.70	.70
Ozark.....	36	32	30	28	23	18	18	17	16	15	12	17	22	30	15	18	9	7	6	13	12.00	3	1.20	6	75	5	5	16.00	.70	.70
Swell.....	38	34	32	30	24	19	19	18	17	16	13	18	23	32	16	20	9	8	6	14	13.50	3	1.30	7	80	5	6	20.00	.85	.85
Newton.....	42	38	35	32	26	21	21	20	19	16	21	26	37	19	24	14	13	12	11	15	15.00	3	1.50	8	85	6	6	25.00	1.00	1.00
Pinckard.....	42	38	35	32	26	21	21	20	19	16	21	26	37	19	24	14	13	12	11	15	15.00	3	1.50	8	85	6	6	25.00	1.00	1.00
Midland City.....	44	40	37	33	27	22	22	20	19	16	22	27	38	20	24	15	14	13	12	16	16.00	4	1.60	84	85	7	7	27.00	1.00	1.00
Abbeville-June.....	46	42	38	34	28	23	23	21	20	17	23	28	39	21	25	13	10	8	7	17	16.50	4	1.60	84	85	7	7	27.00	1.00	1.00
Dorham.....	48	44	39	35	29	24	24	21	20	17	24	29	40	22	26	14	10	9	8	18	16.50	4	1.65	9	85	7	7	28.00	1.00	1.00

Cowalla	50	40	30	24	24	22	21	18	24	30	41	22	20	15	10	9	18	17.00	1.65	9	1.05	7	6	29.00	1.50
Ashford	52	48	41	37	30	25	22	21	18	25	31	22	20	16	11	10	18	18.00	1.70	9	1.10	8	6	30.00	1.50
Pansey	54	50	42	38	31	25	22	21	18	26	32	22	20	17	11	11	18	19.00	1.75	9	1.15	8	6	31.00	1.50
Gordon	56	51	43	39	32	26	22	21	18	26	32	22	20	18	11	11	19	19.50	1.75	9	1.20	8	6	32.00	1.50
Alaga	58	52	44	40	32	26	23	22	19	26	32	22	20	19	11	11	21	21.00	1.75	9	1.20	8	6	33.00	1.50
Saffold	58	52	44	40	32	26	23	22	19	26	32	22	20	19	11	11	21	21.00	1.75	9	1.20	8	6	33.00	1.50
Josephine	60	53	45	41	33	27	23	22	19	27	33	22	20	19	11	11	21	21.00	1.80	10	1.25	9	6	34.00	1.50
Jakin	60	53	45	41	33	27	23	22	19	27	33	22	20	19	11	11	21	21.00	1.80	10	1.25	9	6	34.00	1.50
Donaldsonville	62	54	46	42	35	28	24	23	19	28	35	22	21	21	13	12	22	21.00	1.80	10	1.30	10	7	35.00	1.75
Iron City	62	54	46	42	35	28	24	23	19	28	35	22	21	21	13	12	22	21.00	1.80	10	1.30	10	7	36.00	1.75
Brinson	64	55	47	43	36	30	26	23	19	30	36	22	21	22	14	13	24	22.50	1.90	10	1.35	10	7	37.00	1.75
Bainbridge	66	56	48	44	38	32	27	24	19	32	38	22	21	23	15	13	25	24.00	2.00	10	1.40	10	7	38.00	1.85
Ada	66	56	48	44	38	32	27	24	19	32	38	22	21	23	15	13	25	24.00	2.00	10	1.40	10	7	38.00	1.85
Sellers	66	56	48	44	38	32	27	24	19	32	38	22	21	23	15	13	25	24.00	2.00	10	1.40	10	7	38.00	1.85
Strala	68	58	50	46	40	34	28	25	18	34	40	22	21	24	16	15	26	25.00	2.10	10	1.45	10	7	39.00	1.85
Nafel	68	58	50	46	40	34	28	25	18	34	40	22	21	24	16	15	26	25.00	2.10	10	1.45	10	7	39.00	1.85
La Pine	68	58	50	46	40	34	28	25	18	34	40	22	21	24	16	15	26	25.00	2.10	10	1.45	10	7	39.00	1.85
Bradleyton	70	60	52	48	42	36	30	26	20	36	42	22	21	25	17	16	28	26.00	2.20	10	1.50	10	7	40.00	1.00
Petrey	70	60	52	48	42	36	30	26	20	36	42	22	21	25	17	16	28	26.00	2.20	10	1.50	10	7	40.00	1.00
Pattsburg	72	62	54	50	44	38	32	27	21	38	44	22	21	26	18	18	30	27.00	2.30	10	1.60	10	7	41.00	1.00
Lafayette	72	62	54	50	44	38	32	27	21	38	44	22	21	26	18	18	30	27.00	2.30	10	1.60	10	7	41.00	1.00

* Freight for stations marked thus, must be prepaid.

Tariff of local freight rates between Montgomery, Ala., and local stations on the Alabama Midland Ry.

Between Montgomery, Ala., and—	Per one hundred pounds.																Per bbl.	Per 100 pounds.					Per car.	Per 100 lbs.	Brick, common, C. L. 30,000 lbs. minimum.	Cotton seed, cotton seed hulls, and fertilizer, carload 12 tons min- imum.	Cotton seed, cotton seed hulls, and fertilizer, L. C. L.	Barrels, half-barrels, and kegs, empty, except ale and beer.	Barrels, half-barrels, and kegs, empty, except ale and beer.	Per 100 lbs.	Per 100 ton.	Per 100 ton.	Per 100 lbs.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.	Per 100 ton.
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64	56	48	44	38	32	26	20	14	8	2	24.00	100	1.35	10	7	37.00	1.75
66	58	50	44	38	32	26	20	14	8	2	24.00	100	1.35	10	7	37.00	1.75
67	57	49	43	37	31	25	19	13	7	1	24.00	100	1.40	11	7	38.00	1.75
68	58	50	44	38	32	26	20	14	8	2	24.00	100	1.40	11	7	39.00	1.75
69	59	51	45	39	33	27	21	15	9	3	24.00	100	1.50	11	7	39.00	1.75
70	60	52	46	40	34	28	22	16	10	4	24.00	100	1.50	11	7	39.00	1.75
71	61	53	47	41	35	29	23	17	11	5	24.00	100	1.60	12	8	40.00	2.00
72	62	54	48	42	36	30	24	18	12	6	24.00	100	1.60	12	8	40.00	2.00
73	63	55	49	43	37	31	25	19	13	7	24.00	100	1.70	12	8	41.00	2.00
74	64	56	50	44	38	32	26	20	14	8	24.00	100	1.70	12	8	41.00	2.00
75	65	57	51	45	39	33	27	21	15	9	24.00	100	1.80	13	8	42.00	2.00
76	66	58	52	46	40	34	28	22	16	10	24.00	100	1.80	13	8	42.00	2.00
77	67	59	53	47	41	35	29	23	17	11	24.00	100	1.80	13	8	42.00	2.00
78	68	60	54	48	42	36	30	24	18	12	24.00	100	1.80	13	8	42.00	2.00
79	69	61	55	49	43	37	31	25	19	13	24.00	100	1.80	13	8	42.00	2.00
80	70	62	56	50	44	38	32	26	20	14	24.00	100	1.80	13	8	42.00	2.00
81	71	63	57	51	45	39	33	27	21	15	24.00	100	1.80	13	8	42.00	2.00
82	72	64	58	52	46	40	34	28	22	16	24.00	100	1.80	13	8	42.00	2.00
83	73	65	59	53	47	41	35	29	23	17	24.00	100	1.80	13	8	42.00	2.00
84	74	66	60	54	48	42	36	30	24	18	24.00	100	1.80	13	8	42.00	2.00
85	75	67	61	55	49	43	37	31	25	19	24.00	100	1.80	13	8	42.00	2.00
86	76	68	62	56	50	44	38	32	26	20	24.00	100	1.80	13	8	42.00	2.00
87	77	69	63	57	51	45	39	33	27	21	24.00	100	1.80	13	8	42.00	2.00
88	78	70	64	58	52	46	40	34	28	22	24.00	100	1.80	13	8	42.00	2.00
89	79	71	65	59	53	47	41	35	29	23	24.00	100	1.80	13	8	42.00	2.00
90	80	72	66	60	54	48	42	36	30	24	24.00	100	1.80	13	8	42.00	2.00
91	81	73	67	61	55	49	43	37	31	25	24.00	100	1.80	13	8	42.00	2.00
92	82	74	68	62	56	50	44	38	32	26	24.00	100	1.80	13	8	42.00	2.00
93	83	75	69	63	57	51	45	39	33	27	24.00	100	1.80	13	8	42.00	2.00
94	84	76	70	64	58	52	46	40	34	28	24.00	100	1.80	13	8	42.00	2.00
95	85	77	71	65	59	53	47	41	35	29	24.00	100	1.80	13	8	42.00	2.00
96	86	78	72	66	60	54	48	42	36	30	24.00	100	1.80	13	8	42.00	2.00
97	87	79	73	67	61	55	49	43	37	31	24.00	100	1.80	13	8	42.00	2.00
98	88	80	74	68	62	56	50	44	38	32	24.00	100	1.80	13	8	42.00	2.00
99	89	81	75	69	63	57	51	45	39	33	24.00	100	1.80	13	8	42.00	2.00
100	90	82	76	70	64	58	52	46	40	34	24.00	100	1.80	13	8	42.00	2.00

* Freight for stations marked thus must be prepaid.

604 *Exhibit No. 2 to deposition of Lee McLendon—W. S. T., Com'r.*

This is to certify that the within Local Distance Freight Tariff No. 3 of the Alabama Midland Railway Company was this day examined and approved by the railroad commission of Alabama, subject to future revision and modification by the commission at any time.

Done at the office of the railroad commission of the State of Alabama, in the city of Montgomery, on this the 2nd day of September, in the year 1890.

HENRY R. SHORTER,
Pres't R. R. Com'n of Ala.
LEVI W. LAVLER,
W. C. TUNSTALL,
Associate Commissioners.

C. P. JACKSON, Clerk.

It will be noted that this certificate of approval is for Local Tariff No. 3, but Local Tariff No. 4 is simply a reissue of Tariff No. 3, the same figures being used.

605 *Exhibit No. 3 to deposition of Lee McLendon—W. S. T., Com'r.*

[Extracts from the code of Alabama, volume 1, with regard to the powers of the railroad commission of the State of Alabama in the matter of rates of transportation to be charged by railroads in that State.]

SEC. 1130. Revision of railroad tariffs.—It is the duty of the railroad commissioners to consider and carefully revise all tariffs of charges for transportation made by any person or corporation owning or operating a railroad in this State; and if in their judgement any such charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality, or corporation, they shall notify the party making the same of the changes necessary to reduce the rate to just compensation, or so as to avoid unjust discrimination; and when such changes are made, or when none are deemed proper and expedient, they shall append to the tariff of charges a certificate of their approval; and they shall exercise a watchful and careful supervision over all tariffs and their operation, and revise the same from time to time as justice to the public and railroads may require, and increase or reduce any of the rates as experience and business operations may show to be just; but in revising any tariff the commissioners shall take into consideration the nature of the service to be performed, the entire business of the railroad, and its earnings from passengers and other traffic, and so revise the same as to allow a fair and just return on the value of the railroad, its appurtenances, and equipments.

SEC. 1131. Complaints against approved tariffs and proceedings thereon.—The commissioners must hear and consider all complaints made to them in writing by any person against any railroad tariff of rates approved by them, on the ground that the same affords more than just compensation, or amounts to unjust discrimination, and specifying the item or items against which complaint is made; and if it appear to them that the matter should be investigated, they shall forthwith fix the time and place for hearing the complaint, and furnish the person or cor-

poration operating the railroad against which the complaint is made with a copy of such complaint and notice of the time and place fixed by them for hearing the same; and at such time and place they shall hear the parties in person or by counsel, and such evidence, written or oral, as may be offered, allowing the examination of witnesses under oath and giving such time and latitude to each side, and so regulating the opening and concluding of argument as to them may seem best adapted to attaining the truth; and conforming as nearly as may be convenient to the mode of proceedings required of arbitrators. When the hearing is concluded the commission's shall give to the person or corporation operating such railroad written notice of any changes deemed proper by them to be made.

SEC. 1132. When must make recommendations of joint local rates.—When any line of railroad consists of two or more railroads under one general management, or when there are connecting lines of railroad, such commissioners shall recommend joint local rates of freight, so as to avoid, as far as possible, the injustice of combined local rates in the transportation of freight over such line of lines; but in making any such recommendation they shall have due regard for the value of the services to be performed and the rules and principals governing such transportation, and shall not, in any instance, make any recommendation which does not allow the persons or corporations operating such lines a fair and reasonable compensation for the services to be performed.

607 Exhibit No. 7 to deposition of Lee McLendon.—W. S. T., com'r.

Comparison of rates on Classes B, C, D, and F, and fertilizers, C. L. per ton.

Distances.	At present in effect.					Approved by the R. R. commission of Ala. to be effective Sept. 15th, 1894.				
	B	C	D	F	Fert., C. L. per ton.	B	C	D	F	Fert., C. L. per ton.
10 miles and under.....	10	7	6	14	\$0.80	10	10	7	20	\$1.00
15 " " " over 10.....	11	8	7	16	0.80	12	11	8	22	1.00
20 " " " " 15.....	12	9	8	18	0.90	13	12	9	24	1.00
25 " " " " 20.....	13	10	9	20	1.00	14	13	10	26	1.20
30 " " " " 25.....	14	11	10	22	1.10	15	14	11	28	1.30
35 " " " " 30.....	15	11	10	22	1.20	16	15	12	30	1.30
40 " " " " 35.....	16	12	11	24	1.20	17	16	13	32	1.40
45 " " " " 40.....	17	12	11	24	1.30	18	17	14	34	1.50
50 " " " " 45.....	18	13	12	26	1.30	19	18	15	36	1.50
55 " " " " 50.....	19	13	12	26	1.40	20	19	16	37	1.60
60 " " " " 55.....	19	14	13	28	1.40	20	19	16	38	1.60
65 " " " " 60.....	20	14	13	28	1.40	21	20	17	39	1.60
70 " " " " 65.....	21	14	13	28	1.45	21	20	17	40	1.65
75 " " " " 70.....	21	15	14	30	1.45	22	21	18	41	1.65
80 " " " " 75.....	22	15	14	30	1.50	22	21	18	42	1.70
85 " " " " 80.....	22	15	14	30	1.50	22	21	18	42	1.70
90 " " " " 85.....	23	15	14	30	1.55	22	21	18	42	1.75
95 " " " " 90.....	23	16	15	32	1.55	23	22	19	44	1.75
100 " " " " 95.....	24	16	15	32	1.60	23	22	19	44	1.80
110 " " " " 100.....	25	16	15	32	1.60	23	22	19	44	1.80
120 " " " " 110.....	26	16	15	32	1.65	23	22	19	44	1.90
130 " " " " 120.....	27	16	15	32	1.65	23	22	19	44	2.00
140 " " " " 130.....	28	17	16	34	1.70	23	22	19	44	2.00
150 " " " " 140.....	29	17	16	34	1.70	23	22	19	44	2.00
160 " " " " 150.....	30	17	16	34	1.75	24	23	20	46	2.10
170 " " " " 160.....	31	17	16	34	1.75	25	24	20	48	2.20
180 " " " " 170.....	32	17	16	34	1.80	26	25	20	50	2.30
190 " " " " 180.....	33	17	16	34	1.80	27	26	20	52	2.30

608 *Exhibit No. 8 to deposition of Lee McLendon—W. S. T., Comr.**Rates of freight on classes specified.*

FROM NEW YORK, BOSTON, & PROVIDENCE, SEPT. 1, 1893, TO MAY 28, 1894.

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
For Montgomery.....	114	98	86	73	60	49	36	48	40	39	58	68	78
To Mobile.....	75	65	55	45	40	35	30	35	40	45	45	45	90

* Mobile rates to June 2, 1894.

FROM NEW YORK, BOSTON, & PROVIDENCE, MAY 28 TO JUNE 2, 1894.

For Montgomery.....	94	83	68	57	47	43	32	Other classes unchanged.					
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FROM NEW YORK, BOSTON, & PROVIDENCE, JUNE 2 TO AUG. 1, 1894.

To Montgomery.....	}	40	34	30	26	21	17	17	Other classes unchanged.				
To Mobile.....													

FROM NEW YORK, BOSTON, & PROVIDENCE, AUGUST TO PRESENT.

To Montgomery.....	114	98	86	73	60	49	36	48	40	39	58	68	78
To Mobile.....	75	65	55	45	40	35	30	35	40	45	45	45	90

609

Rates of freight on classes specified, No. 2.

FROM NEW YORK, BOSTON, AND PROVIDENCE, OCT. 1, 1891, TO MAY 28, 1894.

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
To Troy.....	136	117	103	89	74	61	48	58	47	45	70	82	92

FROM NEW YORK, BOSTON, AND PROVIDENCE, MAY 28 TO JUNE 5, 1894.

To Troy.....	116	102	85	74	51	63	40	Other classes unchanged.					
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FROM NEW YORK, BOSTON, AND PROVIDENCE, JUNE 5 TO AUG. 1ST, 1894.

To Troy.....	62	53	47	42	35	29	29	Other classes unchanged.					
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609½

Rates of freight on classes specified, No. 3.

TO TROY, JUNE 1ST, 1894, TO JUNE 20, 1894.

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
From Louisville.....	140	130	113	95	75½	62	45	50	37	32	60	59	66
From Cincinnati.....	150	140	123	103	82½	68	49	52	39	34	73	63	70
From St. Louis.....	168	153	133	109	87½	72	52	58	44	37	77	69	80

Rates of freight on classes specified, No. 3—Continued.

TO TROY, JUNE 20, 1894, TO AUGUST 1ST, 1894.

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	F
From Louisville.....	80	70	63	55½	39½	35½	33	50	37	32	69	66
From Cincinnati.....	90	80	73	63	46½	41½	37	52	39	34	73	70
From St. Louis.....	108	93	83	69½	61½	45½	40	58	44	37	77	80

TO TROY, AUGUST 1ST, 1894, TO OCTOBER 20, 1894.

From Louisville.....	140	130	113	95	75½	62	45	50	37	32	69	66
From Cincinnati.....	150	140	123	103	82½	68	49	52	39	34	73	70
From St. Louis.....	168	153	133	109	87½	72	52	58	44	37	77	80

613, 614] *Exhibit 4 to deposition of Lee McLendon, being pages 38, 39, and 55 of the 21st Annual Report of the Railroad Commission of Georgia for the year ending Oct. 15, 1893.*

STANDARD FREIGHT TARIFF—CLASSES.

Distance, Miles.	Per 100 pounds.										Per 100 lbs.	Per 100 pounds.	Per ton.		Per carload.			R						
	1	2	3	4	5	6	A	B	C	D			E	F	G	H	J		K	L	M	N	O	P
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8	8	4	35	55	5 00	5 50	4 00	4		
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	12	10	5	50	80	6 50	8 00	5 00	5		
15	18	16	15	12	11	9	9	9	6½	5½	11	12½	3½	14	12	5½	55	85	7 50	9 00	6 00	5½		
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14	13	6	60	90	8 00	10 00	7 00	6		
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16	14	6½	65	95	9 00	11 00	8 00	6½		
30	24	21	19	17	14	11	11	11	7½	6½	13	15	5½	16	14	6½	70	1 00	10 00	11 00	8 00	7		
35	26	23	21	19	15	12	12	12	8	7	15	16½	6½	19	16	7½	75	1 05	12 00	12 00	9 00	7½		
40	27	24	22	20	16	12	12	12	8	7	16	16½	6½	20	17	8	80	1 10	13 00	12 00	9 00	8		
45	29	26	24	21	17	13	13	13	8	8	17	17½	6½	21	18	8	85	1 15	14 00	13 00	10 00	8½		
50	30	27	25	22	18	13	13	13	8½	8	18	17½	6½	22	19	8	90	1 20	14 00	13 00	10 00	9		
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23	20	8	95	1 25	14 00	14 00	10 00	9		
60	33	30	27	24	19	14	14	14	9	8½	20	19	7	24	21	9	1 00	1 30	14 50	14 00	11 00	10		
65	35	32	29	26	20	15	15	15	9½	9	20	19	7½	25	22	9	1 05	1 35	15 50	15 00	11 00	10		
70	36	33	30	27	21	16	16	16	10	9	21	20	7½	26	23	9	1 10	1 40	16 00	15 00	11 00	11		
75	38	35	32	29	22	17	17	17	11	10	22	21	8	28	24	9½	1 15	1 50	17 00	16 00	12 00	11		
80	39	36	33	30	27	21	21	21	11	10	23	22	8	29	25	10	1 20	1 55	17 00	16 00	12 00	12		
85	41	38	35	32	29	22	22	22	11½	11	24	23	8½	30	26	10	1 25	1 60	18 00	17 00	13 00	12		
90	42	39	36	33	30	23	23	23	12	11	25	24	8½	31	27	10½	1 30	1 65	19 00	17 00	13 00	13		
95	44	41	38	35	32	24	24	24	13	12	26	25	9	32	28	11	1 35	1 70	20 00	18 00	14 00	14		
100	45	42	39	36	33	25	25	25	13	12	27	26	9	33	29	11	1 40	1 75	21 00	18 00	14 00	14		
110	48	45	42	39	35	27	27	27	14	13	28	28	9	35	30	11	1 50	1 80	22 00	19 00	15 00	15		
120	51	48	45	42	37	31	31	31	15	14	30	30	9½	36	31	12	1 60	1 85	23 00	20 00	16 00	16		
130	54	51	48	45	40	33	33	33	16	15	31	31	9½	37	32	12	1 70	1 90	24 00	21 00	17 00	17		
140	57	54	51	48	43	35	35	35	17	16	32	32	9½	38	33	12	1 80	1 95	25 00	22 00	18 00	18		
150	60	56	53	50	45	37	37	37	18	17	33	33	9½	39	34	13	1 90	2 00	26 00	23 00	19 00	19		
160	62	58	55	52	47	39	39	39	19	18	34	34	9½	40	35	13	2 00	2 05	27 00	24 00	20 00	20		
170	64	61	58	55	49	41	41	41	20	19	35	35	9½	41	36	13	2 10	2 10	28 00	25 00	21 00	21		
180	66	63	60	57	51	43	43	43	21	20	36	36	9½	42	37	14	2 20	2 15	29 00	26 00	22 00	22		
190	68	65	62	59	53	45	45	45	22	21	37	37	9½	43	38	14	2 30	2 20	30 00	27 00	23 00	23		
200	70	67	64	61	55	47	47	47	23	22	38	38	9½	44	39	14	2 40	2 25	31 00	28 00	24 00	24		
210	71	68	65	62	56	49	49	49	24	23	39	39	9½	45	40	14	2 50	2 30	32 00	29 00	25 00	25		
220	72	69	66	63	57	51	51	51	25	24	40	40	9½	46	41	14	2 60	2 35	33 00	30 00	26 00	26		
230	73	70	67	64	58	52	52	52	26	25	41	41	9½	47	42	14	2 70	2 40	34 00	31 00	27 00	27		
240	74	71	68	65	59	53	53	53	27	26	42	42	9½	48	43	14	2 80	2 45	35 00	32 00	28 00	28		

250	75	70	55	45	35	20	30	39	50	19	18	35	38	100	45	40	15	3	50	2	75	32	50	24	00	22	00
260	76	71	56	46	36	21	31	41	51	20	19	36	39	101	46	41	16	3	51	2	76	33	51	24	00	22	00
270	77	72	57	47	37	22	32	42	52	21	20	37	40	102	47	42	17	3	52	2	77	34	52	25	00	23	00
280	78	73	58	48	38	23	33	43	53	22	21	38	41	103	48	43	18	3	53	2	78	35	53	25	00	24	00
290	79	74	59	49	39	24	34	44	54	23	22	39	42	104	49	44	19	3	54	2	79	36	54	26	00	24	00
300	80	75	60	50	40	25	35	45	55	24	23	40	43	105	50	45	20	3	55	2	80	37	55	27	00	24	00
310	81	76	61	51	41	26	36	46	56	25	24	41	44	106	51	46	21	3	56	2	81	38	56	28	00	24	00
320	82	77	62	52	42	27	37	47	57	26	25	42	45	107	52	47	22	3	57	2	82	39	57	29	00	24	00
330	83	78	63	53	43	28	38	48	58	27	26	43	46	108	53	48	23	3	58	2	83	40	58	30	00	24	00
340	84	79	64	54	44	29	39	49	59	28	27	44	47	109	54	49	24	3	59	2	84	41	59	31	00	24	00
350	85	80	65	55	45	30	40	50	60	29	28	45	48	110	55	50	25	3	60	2	85	42	60	32	00	24	00
360	86	81	66	56	46	31	41	51	61	30	29	46	49	111	56	51	26	3	61	2	86	43	61	33	00	24	00
370	87	82	67	57	47	32	42	52	62	31	30	47	50	112	57	52	27	3	62	2	87	44	62	34	00	24	00
380	88	83	68	58	48	33	43	53	63	32	31	48	51	113	58	53	28	3	63	2	88	45	63	35	00	24	00
390	89	84	69	59	49	34	44	54	64	33	32	49	52	114	59	54	29	3	64	2	89	46	64	36	00	24	00
400	90	85	70	60	50	35	45	55	65	34	33	50	53	115	60	55	30	3	65	2	90	47	65	37	00	24	00
410	91	86	71	61	51	36	46	56	66	35	34	51	54	116	61	56	31	3	66	2	91	48	66	38	00	24	00
420	92	87	72	62	52	37	47	57	67	36	35	52	55	117	62	57	32	3	67	2	92	49	67	39	00	24	00
430	93	88	73	63	53	38	48	58	68	37	36	53	56	118	63	58	33	3	68	2	93	50	68	40	00	24	00
440	94	89	74	64	54	39	49	59	69	38	37	54	57	119	64	59	34	3	69	2	94	51	69	41	00	24	00
450	95	90	75	65	55	40	50	60	70	39	38	55	58	120	65	60	35	3	70	2	95	52	70	42	00	24	00
460	96	91	76	66	56	41	51	61	71	40	39	56	59	121	66	61	36	3	71	2	96	53	71	43	00	24	00

PLANT SYSTEM—*Continued.*

ALABAMA MIDLAND DIVISION.

Passenger—Class A—(Three cents per mile.)

Freight—

On Classes 1, 2, 3, 4, 5, 6, A, E, G, H, L*, N, O, the standard tariff with twenty per cent added.

On Classes B, K, M, R, the standard tariff with ten per cent added.

On Classes C, D, F, J, and P, the standard tariff without percentage.

On Rosin, Class K, less twenty per cent.

*On coal and coke: For 50 miles and under, Class L; for 100 miles and over 50, Class L, less five per cent; over 100 miles, Class L, less ten per cent.

*On lime and ice, the standard tariff with ten per cent added.

Distance table.

Bainbridge.....	0	Brooklyn.....	16	Josephine.....	28
Brinson.....	11	Donaldsonville.....	21		

(End of plant system.)

- 618 *Exhibit 5 to deposition of Lee McLendon, being pages 120 to 133, both inclusive, of the 21st Annual Report of the Railroad Commission of Georgia, for the year ending Oct. 15, 1893.*

The following is the law under which the railroad commission was created, being act No. 269, part 1, title 12 of the acts and resolutions of the general assembly of the State of Georgia, 1878-1879:

AN ACT to provide for the regulation of railroad freight and passenger tariffs in this State; to prevent unjust discrimination and extortion in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and prescribe a mode of procedure and rules of evidence in relation thereto; and to appoint commissioners, and to prescribe their powers and duties in relation to the same.

Whereas, It is made the duty of the General Assembly, in article 4, paragraph 2, and section 1 of the Constitution, to pass laws, from time to time, to regulate freight and passenger tariffs; to prohibit unjust discrimination on the various railroads of this State, and to prohibit railroads from charging other than just and reasonable rates, and enforce the same by adequate penalties; therefore,

Commissioners, appointment, term and salary.

SECTION I. Be it enacted by the General Assembly of Georgia, That there shall be three Commissioners, appointed by the Governor, with the advice and consent of the Senate, to carry out the provisions of this Act, of whom one shall be of experience in the law, and one of experience in the railway business. After the expiration of the terms of the office of

the Commissioners first appointed, the term of office of successors shall be six years; but, at the first appointment, one Commissioner shall be appointed for two years, one for four years, and one for six years. The salary of each Commissioner shall be twenty-five hundred dollars, to be paid from the Treasury of the State. Any Commissioner may be suspended from office by order of the Governor, who shall report the fact of such suspension, and the reasons therefor to the next General Assembly, and if a majority of each branch of the General Assembly declare that said Commissioner shall be removed from office, his term of office shall expire. The Governor shall have the same power to fill vacancies in the office of Commissioner as to fill other vacancies, and if, for any reason, said Commissioners are not appointed during the present session of the General Assembly, the Governor shall appoint them thereafter, and report to the next Senate, but the time until then shall not be counted as part of the term of office of said Commissioners, respectively as herein provided. Said Commissioners shall take an oath of office, to be framed by the Governor, and shall not, jointly or severally, or in any way, be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company, or have any interest in any way in any railroad, and shall so continue during the term of office; and in case any Commissioner becomes disqualified in any way, he shall at once remove the disqualifications or resign, and on failure so to do, he must be suspended from office by the Governor, and dealt with as hereinafter provided. In any case of suspension the Governor may fill the vacancy until the suspended Commissioner is restored or removed.

SEC. II. That said Commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a Secretary or Clerk at a salary of fifteen hundred dollars at the expense of the State. The office of said Commissioners shall be kept in Atlanta, and all sums of money authorized to be paid by this Act out of the State Treasury shall be paid only on the order of the Governor; Provided, That
619 the total sum to be expended by said Commissioners for office rent, furniture and stationery shall, in no case, exceed the sum of eight hundred (\$800) dollars, or so much thereof as may be necessary, per annum.

SEC. III. That from and after the passage of this Act, if any railroad corporation, organized or doing business in this State, under any act of incorporation or general law of this State now in force, or which may hereafter be enacted, or any railroad corporation organized, or which may hereafter be organized under the laws of any other State, and doing business in this State, shall charge, collect, demand or receive more than a fair or reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its

Location of office, employment of secretary, expenses, etc.

Extortion by railroads forbidden.

track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or permission to use, operate or control, the same shall be deemed guilty on extortion, and, upon conviction thereof, shall be dealt with as hereinafter provided.

Unjust discrimination forbidden.

SEC. IV. That if any railroad corporation as aforesaid shall make any unjust discrimination in its rates or charges of toll or compensation for the transportation of passengers or freights of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license or permission to operate, control or use, within this State, the same shall be deemed guilty of having violated the provisions of this Act, and, upon conviction thereof, shall be dealt with as hereinafter provided.

Duty of commissioners.

SEC. V. That the Commissioners appointed, as hereinbefore provided, shall, as provided in the next section of this Act, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads thereof; shall make reasonable and just rules and regulations, to be observed by all railroad companies doing business in this State, as to charges at any and all points, for the necessary handling and delivering of freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discriminations in the transportations of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting railroads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the location of such depots, and the establishment of such freight and passenger buildings, as the condition of the road, the safety of freight and the public comfort may require; Provided, however, That before applying joint rates to roads that are not under the management and control of one and the same company, the Commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried; and shall make just and reasonable rules and regulations, to be observed by said railroad companies on said railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers; Provided, That nothing in this Act contained shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any

620 railroad carrying the same are charged by such railroad, but said railroad companies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this Act; and said Commissioners shall have full power by rules and regulations to designate and fix the difference in rates of freight and passenger transportation, to be allowed for longer and shorter distances on the same or different railroads, and to ascertain what shall be the limits of longer and shorter distances.

SEC. VI. That the said Railroad Commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for the transportation of passengers and freights and cars on each of said railroads; and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said Commissioners shall, from time to time, and as often as circumstances may require, change and revise said schedules. [When any schedule shall have been made or revised as aforesaid, it shall be the duty of said Commissioners to cause publication thereof to be made for one time in some public newspaper published in the cities of Atlanta, Augusta, Albany, Savannah, Macon, Rome, Athens, Americus and Columbus, in this State, at a rate not to exceed fifty cents per square of usual advertising space when less than a column is occupied, or more than twelve dollars per column when as much space as a column or more is occupied, by inserting said schedule or change of any schedule, so that said newspaper shall not charge for such advertising any rate in excess of that allowed for county legal advertising; and after the same shall be so published, it shall be the duty of all such railroad companies to post at all their respective stations, in a conspicuous place, a copy of said schedule for the protection of the people; Provided, That the schedule thus prepared and published, as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication; Provided, That when any rate or change is made by the Commissioners that affects only one road or roads in a particular locality, the insertion need only be made in the paper published in one of the cities named nearest where the change is made (Act 27th September, 1883); Provided, That the schedules thus prepared shall not be taken as evidence, as herein provided, until schedules shall have been prepared and published as aforesaid, for all the railroad companies now

Commissioners shall make schedule of rates, publish same, etc.

organized under the laws of this State, or that may be organized at the time of said publication. All such schedules, purporting to be printed and published as aforesaid, shall be received and held in all such suits as prima facie the schedules of said Commissioners, without further proof than the production of the schedules desired to be used as evidence, with a certificate of the Railroad Commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been duly published as required by law.]

Jurisdiction
and power of
Commissioners.

SEC. VII. That it shall be the duty of said Commissioners to investigate the books and papers of all the railroad companies doing business in this State, to ascertain if the rules and regulations aforesaid have been complied with, and to make personal visitation of railroad offices, stations, and other places of business for the purpose of examination, and to make rules and regulations concerning such examination, which

621 rules and regulations shall be observed and obeyed as other rules and regulations aforesaid; said Commissioners shall also have full power and authority to examine all agents and employees of said railroad companies, and other persons, under oath or otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this Act.

Power of com-
missioners over
contracts be-
tween railroads.

SEC. VIII. That all contracts and agreements between railroad companies doing business in this State, as to rates of freight and passenger tariffs, shall be submitted to said Commissioners for inspection and correction, that it may be seen whether or not they are a violation of law or of the provisions of the Constitution, or of this Act, or of the rules and regulations of said Commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State, shall be submitted to said Commissioners for inspection and approval, in so far as they affect rules and regulations made by said Commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariffs; and said Commissioners may make such rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreement, not approved by such Commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of article 4, section 1, paragraph 4 of the Constitution, and shall be illegal and void.

SEC. IX. That if any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said Commissioners; and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by the Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars, nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall lie in any county in the State where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The Commissioners shall institute such action through the Attorney-General or Solicitor-General, whose fees shall be the same as now provided by law.

Penalty for violation of rules.

SEC. X. That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commissioners aforesaid, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same was done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that, in cases of willful violation of law, such railroad companies shall be liable to exemplary damages; Provided, That all suits under this Act shall be brought within twelve months after the commission of the alleged wrong or injury.

Injuries resulting from violation of rules.

SEC. XI. That in all cases under the provision of this Act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this Act shall be paid into the State Treasury, to be used for such purposes as the General Assembly may provide. The remedies hereby given the persons injured shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this Act shall not be construed as repealing any statute giving such remedies.

Rules of evidence.

SEC. XII. That the terms "railroad corporation," or "railroad company," contained in this Act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this Act shall apply to all persons, firms and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

Meaning of terms.

SEC. XIII. That all railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, in

Duplicate freight receipts.

which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the article shipped upon payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate this provision of the statute, such railroad company shall incur a penalty to be fixed and collected as provided in section nine of this Act.

Reports of commissioners.

SEC. XIV. That it shall be the duty of the Commissioners herein provided for to make to the Governor annual reports of the transactions of their office, and to recommend, from time to time, such legislation as they may deem advisable under the provisions of this Act.

Power of commissioners over witnesses.

SEC. XV. That said railroad Commissioners, in making any examination for the purpose of obtaining information pursuant to this Act, shall have power to issue subpoenas for the attendance of witnesses, by such rules as they may prescribe. And said witnesses shall receive for such attendance two dollars per day, and five cents per mile, traveled by the nearest practicable route in going to and returning from the place of meeting of said Commissioners, to be ordered paid by the Governor upon presentation of subpoenas, sworn to by the witnesses, as to the number of days served and miles traveled, before the Clerk of said Commissioners, who is hereby authorized to administer oaths. In case any person shall willfully fail or refuse to obey such subpoena, it shall be the duty of the Judge of the Superior Court of any county, upon application of said Commissioners, to issue an attachment for such witness, and compel him to attend before the Commissioners and give his testimony upon such matters as shall be lawfully required by such Commissioners, and said court shall have power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

Railroad officers to report to commissioners.

SEC. XVI. That every officer, agent or employee of any railroad company who shall willfully neglect or refuse to make and furnish any report required by the Commissioners, as necessary to the purpose of this Act, or who shall willfully and unlawfully hinder, delay or obstruct said Commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than one hundred, nor more than five thousand dollars, for each offence, to be recovered in an action of debt in the name of the State.

SEC. XVII. That all laws militating against this Act are hereby repealed.

Approved October 14, 1879.

623 AN ACT to enlarge the powers of the Railroad Commission of Georgia, to prescribe for them additional duties, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, it shall be the duty of the Railroad Commission of the State of Georgia to investigate thoroughly all through freight rates from points out of Georgia to points in Georgia, both those now fixed and those that may hereafter be fixed. Duty to investigate through rates.

SEC. 2. Be it further enacted, That whenever the Railroad Commission of Georgia finds that a through rate, charged into or out of Georgia, is, in their opinion, excessive or unreasonable, or discriminating in its nature, it shall be the duty of the Railroad Commission to call the attention of the railroad officials in Georgia to the fact, and to urge upon them the propriety of changing such rate or rates. Shall call attention of railroad officials to discriminations.

SEC. 3. Be it further enacted, That whenever such rates are not changed according to the suggestion of the Railroad Commission, it shall be the duty of the Commission to present the facts, whenever it can legally be done, to the Interstate Commerce Commission, and appeal to it for relief. Shall appeal to Interstate Commission.

SEC. 4. Be it further enacted, That in all work devolving upon the Railroad Commission prescribed by this Act, they shall receive, upon application, the services of the Attorney-General of this State, and he shall also represent them, whenever called upon to do so, before the Interstate Commerce Commission. Attorney-General required to represent commissions.

SEC. 5. Be it further enacted, That all laws and parts of laws in conflict with this Act, be, and the same are, hereby repealed.

Approved December 18, 1890.

624 POWER TO BRING SUIT.

AN ACT to amend Section 719 (i) of the Code of Georgia of 1882, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the same, That section 719(i) of the Code of Georgia of 1882 be, and the same is, amended by adding thereto the following:

The Commissioners shall have the power, in their discretion, to institute suit without notice for any violation of any of said rules or regulations, whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges, and after the institution of said suit there shall be no settlement of the same without the consent of the said Commissioners, so that said section, when amended, shall read as follows: If any railroad company doing business in this State by its agents or employees shall be guilty of a violation of the rules and regulations provided and prescribed by said Commissioners, and if, after due notice of such violation given Penalty for violation of rules. Amending section IX of original act.

to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by said Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall be in any county in the State, where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The Commissioners shall institute such action through the Attorney-General or Solicitor-General or such other attorney at law of this State as the said Commissioners may appoint, whose fees shall be the same as now provided by law.

Power to institute suit without notice.

The Commissioners shall have the power in their discretion to institute suit without notice for any violation of said rules and regulations whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges, and after the institution of said suit there shall be no settlement of the same without the consent of the Commissioners.

SEC. 2. Be it enacted, That all laws or parts of laws in conflict herewith are hereby repealed.

Approved October 16, 1891.

AMENDING TITLE OF ACT.

AN ACT to amend an Act entitled an Act to provide for the regulation of railroads, freight and passenger tariffs in this State; to prevent unjust discrimination and extortion in the rates charged for transportation of passengers and freights, and to prohibit Railroad Companies, corporations and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint Commissioners, and to prescribe their powers and duties in relation to the same, approved October 14, 1879.

Caption of Act of Oct., 1879, amended.

625 SECTION 1. Be it enacted by the General Assembly of this State, and it is hereby enacted by the authority of the same, That the caption of the above recited Act be, and the same is, hereby amended as follows, to-wit:

by inserting "and the location and building of passenger and freight depots."

After the word tariffs, in the second line, add the following words: "And the location and building of passenger and freight depots," so that the whole caption of said Act will read as follows:

"An Act to provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passenger's and freights, and to prohibit railroad companies, corporations,

and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint Commissioners, and to prescribe their powers and duties in relation to the same.

SEC. 2. Be it further enacted That all laws in conflict with the foregoing be, and the same are, hereby repealed.

Approved August 31, 1891.

INSPECTION OF RAILROAD TRACKS.

AN ACT to give the Railroad Commission of Georgia authority, upon complaint made, to inspect the railroads of any railroad or any part of any railroad in this State; and if found in an unsafe or dangerous condition, to require the same put and kept in such condition as will render travel over the same safe and expeditious; to provide a penalty for failing to obey the orders of the said Commission, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, the Railroad Commission of this State is hereby empowered and required, upon complaint made, to inspect for themselves, or through an agent, the railroads or any railroad or any part of any railroad in this State, and if the same is found in an unsafe or dangerous condition, to require the same put and kept in such condition as will render travel over the same safe and expeditious; Provided, That reasonable time be given the railroad authorities in which to accomplish the work or repairs that may be required or ordered; Provided, That this Act shall not limit or affect the liability of railroads in cases of damage to person or property.

SEC. 2. Be it further enacted, That any railroad, failing or refusing to obey the orders of said Commission within the time allowed for said work, shall be liable to a penalty of not more than five thousand dollars, to be recovered by a suit brought in the name of the State, in which suit the Attorney-General or Solicitor-General shall represent the State, and his fees shall be the same as now provided by law. Suits shall be brought in the county where the wrong or violation occurs.

SEC. 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved October 17, 1891.

Inspection by Commissioners required.

If condition unsafe, to be put and kept in a safe condition.

Reasonable time to be given. Not to affect liability for damages.

Penalty for not obeying order.

STORAGE CHARGES.

AN ACT to require the Railroad Commission to fix rates of storage to be charged by Railroad Companies in this State; to prescribe regulations for charging the same, and to prescribe how suits shall be brought for overcharges, and to fix the measure of recovery, and for other purposes.

Commission to
fix charges for
storage.

And when
such charges
shall begin.

Power to vary
rates.

SECTION 1. Be it enacted by the General Assembly of Georgia, That from and after the passage of this Act, power is hereby conferred on the Railroad Commission of Georgia, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by Railroad Companies doing business in this State, and to fix at what time after the reception of freight at place of destination such charges for storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination and residence of consignee and such other facts as in their judgment should be considered in fixing the same.

Provisions of
other acts as to
Railroad Com-
mission applica-
ble to them.

SEC. 2. Be it further enacted, That all the provisions of the Act creating said Railroad Commission and Acts amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger tariffs, and hearing complaints of carriers and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid.

SEC. 3. Be it further enacted, That no Railroad Company shall make or retain, directly or indirectly, any charge for storage of freight greater than that fixed by the Commission for each particular storage, nor shall they discriminate directly or indirectly by means of rebate, or any other device in such charges, between persons.

SEC. 4. Be it further enacted, That if any Railroad Company shall violate the provisions of this Act, either by exceeding the rates of storage prescribed, or by discriminating as aforesaid, the person or persons so paying such overcharge, or subjected to such discrimination, shall have the right to sue for the same in any court of this State having jurisdiction of the claim, and shall have all the remedies and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same.

SEC. 5. Be it enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved October 17, 1891.

627 TO REGULATE EXPRESS AND TELEGRAPH COMPANIES.

AN ACT to extend the powers of the Railroad Commissioners so as to give them power and authority to regulate charges by Express Companies for transportation; to regulate charges of Telegraph Companies for the transmission of messages by telegraph or charges by persons engaged in the several businesses named herein; to apply the powers given to said Commissioners, by law, over Railroad Companies, to all companies or persons owning, controlling or operating a line or lines of Express and Telegraph; and make the penalties prescribed against railroads for violating Commissioners' rules apply to the companies and persons herein named, whose line or lines is or are, wholly or in part, in this State, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, all companies or persons owning, controlling or operating, or that may hereafter own, control or operate a line or lines of Express or Telegraph, whose line or lines is or are, in whole or in part, in this State, shall be under the control of the Railroad Commissioners of this State, who shall have full power to regulate the prices to be charged by any company or person or persons owning, controlling or operating any line or lines of Express and Telegraph, for any service performed by such company, person or persons; and all the powers given to said Commissioners over railroads in this State, and all the penalties prescribed against Railroad Companies or persons operating railroads by existing laws, embraced in sections of the Code of 1882 from Section 719(a) to Section 719(p), both inclusive, are hereby declared to be of force against corporations, companies or a person or persons, owning, controlling or operating a line or lines of Express and Telegraph, doing business in this State, whose line or lines is or are, wholly or in part, in this State, so far as said provisions of the Code can be made applicable to any corporation, company, person or persons owning, controlling or operating a line or lines of Express and Telegraph. The said Commissioners shall also have power and authority to require said companies to locate agencies at Railroad Stations.

SEC. 2. Be it further enacted by the authority aforesaid, That the powers of the Commissioners to regulate charges by corporations, companies and persons herein referred to shall apply only to charges by express, for transportation from one point to another in this State; and messages sent by telegraph from one point to another in this State.

SEC. 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved Oct. 21, 1891.

Express and Telegraph Companies to be under the control of the Commission. For regulation of prices. Powers over railroads and penalties against them of force as against express and telegraph companies.

So far as applicable.

Location of agencies.

Regulation of charges only as to transportation and messages in this State.

628 The following extracts from the laws of the State, on the subject of transportation of passengers and freight by Railroad Companies, are here inserted, as relating to matters of general interest :

A.

Liability of Railroad Companies as carriers. Railroad companies are common carriers, and liable as such. Code of Georgia, section 2083.

B.

Time of responsibility. A common carrier is bound to receive all goods and passengers offered that he is able and accustomed to carry, upon compliance with such reasonable regulations as he may adopt for his own safety, and the benefit of the public. Code, section 2070.

C.

What passengers may be refused. Carriers of passengers may refuse to admit, or may eject from their conveyances, all persons refusing to comply with reasonable regulations, or guilty of improper conduct, or of bad, dissolute, doubtful or suspicious characters. So they may refuse to convey persons seeking to interfere with their own business or interest. Code, section 2082.

D.

Carrier of passengers. A carrier of passengers is bound to extraordinary diligence on behalf of himself and his agents, to protect the lives and persons of his passengers. But he is not liable for injuries to the person after having used such diligence. Code, section 2067.

E.

For baggage. The carrier of passengers is responsible only for baggage placed in his custody, yet a passenger cannot relieve himself from liability for freight by assuming to take care of his own baggage. Code, section 2071.

F.

On baggage. It is the duty of the railroad company to cause their conductors, agents or employees to be provided with checks, so as to check all trunks or separate baggage of passengers from station to station on their roads when required. And it is the duty of the conductor of every passenger train to cause, upon application to him, all trunks and baggage to be checked from any station to any point of destination on their road, or any road running under the control of the company of which he is conductor. The carrier of passengers has a lien on the baggage, not only for its freight, but for the passenger's fare. Code, section 2079.

G.

A carrier of passengers may limit the value of the baggage ^{Limit as to value of baggage.} to be taken for the fare paid. In case of loss, however, and though no extra freight has been demanded or paid, the carrier is responsible for the value of the baggage lost, provided the same be only such articles as a traveler for business or pleasure would carry for his or her own use. Code, section 2081.

H.

Railroad companies shall keep in each passenger car, or in ^{Water and light on railroad.} any car in which passengers are transported, an adequate supply of good, pure drinking water, at all hours during the day or night, and lights during the night for the use of
 629 passengers. Any conductor or agent of said roads being requested by any passenger to furnish a sufficient supply of water to the passengers in each car, and light at night, and shall pass any depot or station without so doing, shall be liable to be indicted in any county through which the road runs, and upon conviction shall be punished as prescribed in section 4310 of the Code. Code, section 4585.

I.

All common carriers of passengers for hire in this State ^{Equal accommodations to all} shall furnish like and equal accommodations to all persons, without distinction of race, color, or previous condition. Code, section 4586.

J.

The conductors of all trains carrying passengers in this ^{Police of railroads.} State are invested with all the powers, duties, and responsibilities of police officers while on duty on their trains. They may eject all persons gambling or guilty of disorderly conduct, or using profane or vulgar language, and may command the assistance of the employees of the company, and of the passengers on the train, to assist in the removal of such offending person or persons. Code, section 4586 (a).

K.

Whenever any passenger train on any railroad in this ^{Posting time of delayed trains.} State shall be more than one-half hour behind its schedule time when it passes a depot at which there is a telegraph operator, and during the hours when such operator is required to be on duty, it shall be the duty of such railroad company to keep posted at every succeeding telegraph station along its line the time such train is behind its schedule: *Provided*, That such bulletin shall not be required to be posted at any station until one-half hour before the regular schedule time at which such train is to arrive at the station at which such bulletin is required kept. Acts 1884-5, p. 119.

L.

Carriers bound to extraordinary diligence.

The carrier is bound to extraordinary diligence. In cases of loss the presumption is against him, and no excuse avails him unless it was occasioned by the act of God, or the public enemies of the State. Code, section 2066.

M.

Effect of notice to limit.

A common carrier can not limit his legal liability by any notice given, either by publication, or by entry on receipts given or tickets sold. He may make an express contract and will then be governed thereby. Code, section 2068.

N.

Bound to deliver without unreasonable delay.

A common carrier is bound not only for the safe transportation and delivery of goods, but also that the same be done without unreasonable delay. Code, section 2073.

O.

Time of responsibility.

The responsibility of the carrier commences with the delivery of the goods, either to himself or his agent, or at the place where he is accustomed or agrees to receive them. It ceases with their delivery at destination according to the direction of the person sending, or according to the custom of the trade. Code, section 2070.

630

P.

Carrier has lien on goods.

The carrier has a lien on the goods for the freight, and may retain possession until it is paid, unless this right is waived by special contract or actual delivery. This lien exists only when the carrier has complied with his contract as to transportation. He can recover pro rata for the actual distance transported when the consignee voluntarily receives the goods at an intermediate point. Code, section 2077.

Q.

Fraud on carrier.

The carrier may require the nature and value of the goods delivered to him to be made known, and any fraudulent acts, sayings, or concealment by his customers will release him from liability. Code, section 2080.

R.

Freight lists, how made out.

All freight bills or freight lists charged against or to be collected out of any person for whom a railroad shall carry freight in this State shall contain the items of freight charged in said bills or freight lists by some certain and specific description before they shall be collectible. Code, section 2078.

S.

Whenever any party shall deliver any freight to any railroad, steamboat, or express company in this State for transportation, it shall be the duty of the company, on demand, to furnish the party so delivering a good and valid receipt for the same, which receipt shall specify the shipping mark or marks and numbers thereon, and the weight of such article whenever the value can be estimated by weight, and where the value can not be thus estimated, the receipt shall give a general description of such article, and shall specify as nearly as practicable the quantity or value thereof, and also the place of destination. A violation of this law constitutes a misdemeanor. Code, section 4604.

Receipts of carrier.

T.

All railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and, so far as practicable, shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the road that delivers such freight, such agent shall deliver the article shipped on payment of the rate charged for the class of freights mentioned in the receipts. Code, section 719 (m).

Duplicate freight receipts.

U.

Where there are several connecting railroads under different companies, and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus, and until delivered to the connecting road; the last company which has received the goods as "in good order" shall be responsible to the consignee for any damage (open or concealed) done to the goods, and such companies shall settle among themselves the question of ultimate liability. Code, section 2084.

Liability of railroads where there are several.

V.

Railroads are required to switch off and deliver to any connecting road of the same gauge all cars consigned to points on or beyond such connecting road. Code, section 719 (q). They are also required, at the terminus or any intermediate point, to receive from the connecting road of the same gauge, when offered, all cars consigned to any point on the road to which the same is offered, and transport said cars to their destination with reasonable diligence. Acts 1882-3, p. 145.

Roads required to deliver to and receive cars from connecting roads.

Weighing by
sworn weigher.

When any railroad company shall cause to be weighed cars loaded with freight to be shipped and charged for by the carload, such weighing shall be done by a sworn weigher, such as is provided under the laws of this State for the weighing of cotton, rice, and other products. When cars are weighed singly, they shall be uncoupled at both ends and weighed one at a time.

When lumber,
etc., laps from
one car to another.

When lumber, or other like article of freight, which from its length laps over from one car to another, shall be transported, the company may cause two or three of such cars so loaded to be weighed together, after being uncoupled from other cars, and the aggregate weight shall be averaged; provided, in such cases the shipper shall not pay less freight than the amount of freight due on full carloads. Acts 1882-3, p. 127.

X.

Unjust discrimination prohibited.

No railroad corporation organized or doing business in this State shall make any unjust discrimination in its rates or charges of toll for the transportation of passengers, or freight of any description, or for the use and transportation of any railroad car on its said road, or upon any of the branches thereof, or upon any railroads connected therewith which it has license to operate, control, or use. Code, section 719(d). Nor shall any railroad company discriminate in its rates or tariffs of freight in favor of any line or route connected with it as against any other line or route, nor when a part of its own line is sought to be run in connection with any other route shall such company discriminate against such connecting line, or in favor of the balance of its own line, but shall have the same rates for all, and shall afford the usual and like customary facilities for interchange of freight to patrons of each and all lines alike. Code, section 719 (a).

The proviso to the first section of the interstate commerce law reads as follows:

Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storing, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.



6314, 6314] Exhibit 6 to deposition of Lee McLendon, being pages 38 and 39 of the 2nd Annual Report of the Railroad Commission of Georgia for the year ending Oct. 15, 1893.

STANDARD FREIGHT TARIFF—CLASSES.

Per 100 pounds.										Per ton.		Per carload.			Per 100 lbs.							
Distance. Miles.	1	2	3	4	5	6	A	B	C	D	E	F	G	H	J	K	L	M	N	O	P	R
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
5	12	11	10	8	7	6	6	6	4 1/2	3 1/2	7	9	2 1/2	8	8	4	35	55	5 00	5 50	4 00	4
10	16	14	13	10	9	8	8	8	5 1/2	5	9	11 1/2	3 1/2	10	10	5	50	80	6 50	8 00	5 00	5
15	18	16	15	12	11	9	9	9	6	5 1/2	11	12 1/2	3 1/2	12	12	5 1/2	55	85	7 50	9 00	6 00	5 1/2
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14	13	6	60	90	8 00	10 00	7 00	6
25	22	20	18	16	13	11	11	11	7 1/2	6 1/2	13	15	5 1/2	16	14	6 1/2	65	95	9 00	11 00	8 00	6 1/2
30	24	21	19	17	14	11	11	11	7 1/2	6 1/2	14	15	5 1/2	17	15	7	70	1 00	10 00	12 00	9 00	7
35	26	23	21	19	15	12	12	12	8	7 1/2	15	16 1/2	6 1/2	19	16	7 1/2	75	1 05	12 00	14 00	10 00	7 1/2
40	27	24	22	20	16	12	12	12	8	7 1/2	16	16 1/2	6 1/2	20	17	8	80	1 10	13 00	15 00	11 00	8
45	29	26	24	22	17	13	13	13	8 1/2	8	17	17 1/2	6 1/2	21	18	8	85	1 15	14 00	16 00	12 00	8 1/2
50	30	27	25	22	18	13	13	13	8 1/2	8	18	17 1/2	6 1/2	22	19	8	90	1 20	15 00	17 00	13 00	9
55	32	29	26	23	19	14	14	14	9	8 1/2	19	18	7 1/2	23	20	8	95	1 25	16 00	18 00	14 00	9 1/2
60	33	30	27	24	20	15	15	15	9	8 1/2	19	18	7 1/2	24	21	8	1 00	1 30	17 00	19 00	15 00	10
65	35	32	28	25	20	15	15	15	9 1/2	9	20	19	7 1/2	25	22	9	1 05	1 35	18 00	20 00	16 00	10 1/2
70	36	33	29	26	21	16	16	16	10	9 1/2	20	19	7 1/2	26	22	9	1 10	1 40	19 00	21 00	17 00	11
75	38	35	30	27	21	16	16	16	10	9 1/2	21	20	7 1/2	27	23	9 1/2	1 05	1 45	20 00	22 00	18 00	11 1/2
80	39	36	31	28	21	16	16	16	10	9 1/2	21	20	7 1/2	28	23	9 1/2	1 10	1 50	21 00	23 00	19 00	12
85	41	37	32	29	22	17	17	17	11	10	22	21 1/2	7 1/2	29	24	9 1/2	1 15	1 55	22 00	24 00	20 00	12 1/2
90	42	38	33	29	22	17	17	17	11	10	22	21 1/2	7 1/2	29	24	9 1/2	1 15	1 55	23 00	25 00	21 00	13
95	44	39	34	30	23	18	18	18	11 1/2	11	23	22	8	30	25	10	1 20	1 55	24 00	26 00	22 00	13 1/2
100	45	40	35	30	23	18	18	18	11 1/2	11	23	22	8	30	25	10	1 20	1 55	25 00	27 00	23 00	14
110	48	42	37	31	24	19	19	19	12 1/2	12	24	23	8 1/2	31	26	10	1 25	1 50	26 00	28 00	24 00	14 1/2
120	51	44	39	32	25	20	20	20	13	12	25	24	8 1/2	32	27	10 1/2	1 30	1 50	27 00	29 00	25 00	15
130	54	46	41	33	26	21	21	21	13	12	26	25	8 1/2	33	28	10 1/2	1 35	2 00	28 00	30 00	26 00	15 1/2
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34	29	11	1 40	2 10	29 00	31 00	27 00	16
150	60	50	45	35	28	23	23	23	14	13	28	28	9	35	30	11	1 50	2 20	30 00	32 00	28 00	16 1/2
160	62	52	46	36	29	24	24	24	14	13	29	29	9 1/2	36	31	12	1 60	2 25	31 00	33 00	29 00	17
170	64	54	47	37	30	25	25	25	15	14	30	31	9 1/2	37	32	12	1 70	2 30	32 00	34 00	30 00	18
180	66	56	48	38	31	26	26	26	15	14	31	31	9 1/2	38	33	12	1 80	2 35	33 00	35 00	31 00	19
190	68	58	49	39	32	27	27	27	16	15	32	33	9 1/2	39	34	13	1 90	2 40	34 00	36 00	32 00	20
200	70	60	50	40	32	27	27	27	16	15	32	33	9 1/2	40	35	13	2 00	2 45	35 00	37 00	33 00	20 1/2
210	71	62	51	41	33	28	28	28	17	16	33	34	9 1/2	41	36	13	2 10	2 50	36 00	38 00	34 00	21
220	72	64	52	42	34	28	28	28	17	16	33	34	10	42	37	14	2 20	2 55	37 00	39 00	35 00	21 1/2
230	73	66	53	43	34	29	29	29	18	17	34	36	10 1/2	43	38	14	2 30	2 60	38 00	40 00	36 00	22
240	74	68	54	44	34	29	29	29	18	17	34	36	10 1/2	44	39	14	2 40	2 65	39 00	41 00	37 00	22 1/2

632 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. } In equity.

The complainant in the above-entitled cause, in pursuance of the order of said court made July 25, 1894, files the following interrogatories to J. E. Grady, who resides at Apalachicola, Florida :

1st interrogatory. What is your name, place of residence, and business or occupation? When and for how long have you lived at your present place of residence and been employed in your present occupation?

2nd interrogatory. Does your occupation cause you to be familiar with the shipping business at Apalachicola? Are you familiar with such business?

3rd interrogatory. From what points, if any, on the Chattahoochee River are goods shipped via Apalachicola to Mobile, New Orleans, Louisville, Cincinnati, St. Louis, New York and other Eastern cities? If you say there are any such through shipments from Eufaula or Columbus, state the extent of such shipments, to which of said cities they are made, and of what goods they consist? How often on the average per week, per month, or per year have such shipments via Apalachicola been made from Eufaula and Columbus, respectively, to each of said cities?

4th interrogatory. From what points, if any, are or have goods been shipped to Apalachicola and thence up the Chattahoochee River to 633 Eufaula or Columbus? Are or have there been any such shipments of goods from Louisville, Cincinnati, and St. Louis, or from New York and other Northeastern cities? Would not shipments from New York and other Northeastern cities by water to Apalachicola have to pass around Florida Keys? If you state there are or have been any such shipments from Louisville, Cincinnati and St. Louis, or from Northeastern cities, via Apalachicola to Eufaula and Columbus, state the character and extent of such shipments, how often they occur, and from which of said cities they are made?

5th interrogatory. What character of vessels can enter Apalachicola Harbor? Do the vessels which enter said harbor carry goods to or from Mobile, New Orleans, or Northeastern cities? If goods were shipped by river to Apalachicola destined for said cities, how would the transfer of said goods be made to the vessel which carried them on to said cities? How far would the goods have to be carried from the river boat in order to be placed on board the vessel that was to continue the transportation to said cities? What kind of a vessel makes the transfer, and how much time is required for the transfer? On shipments from Mobile, New Orleans, and Northeastern cities by water via Apalachicola to Eufaula or Columbus by river, how would the goods be transferred to the river boat? Would it not be in the same way as on shipments from Apalachicola to Mobile and said other cities? What is the condition of the inlet or entrance through the bar into the harbor at Apalachicola? Was anything done to said bar or inlet during the war; and if so, what? Has it been put in good condition since the war?

6th interrogatory. Do steamers or steam vessels ply between Apalachicola and Mobile, New Orleans, and Northeastern cities? If so, how often? How long does it take such vessels as run or sail between said points to make the trip from or to Apalachicola from or to said last-named cities?

H. D. CLAYTON, *U. S. Atty.*

WM. C. OATES,

L. A. SHAVER,

Attys. for Petitioner.

(Indorsed :) Filed the 31st day of August, 1894. J. W. Dimmick, clerk.

634

U. S. circuit court, mid. dist. of Ala.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} In equity.

Objections to the interrogatories propounded to J. E. Grady, a witness for the complainant in the above-entitled cause.

The defendants, The Alabama Midland Railway Company, The Louisville & Nashville Railroad Company, H. M. Comer and R. Somers Hayes, receivers of the Central Railroad & Banking Company of Georgia, and The Ocean Steamship Company, object to the interrogatories propounded to the witness J. E. Grady as follows, to wit:

They object to the first question of the third interrogatory, because it calls for testimony which would be irrelevant to the issues in the cause and illegal and immaterial.

They also object to the second question of said interrogatory for the same reasons, and to the third question of said interrogatory for the same reasons.

They also object to the first question of the fourth interrogatory for the same reasons; also the second question of the same interrogatory for the same reasons; also to the third question of the same interrogatory for the same reasons; also to the fourth question of the same interrogatory for the same reasons.

They also object to the second question of the fifth interrogatory for the same reasons; also to the third question of the fifth interrogatory for the same reasons; also to the fourth question of the same interrogatory for the same reasons; also to the fifth question of the same interrogatory for the same reasons; also to the sixth question of the same interrogatory

for the same reasons; also to the seventh question of the same

interrogatory for the same reasons.

They also object to the first question of the sixth interrogatory for the same reasons; also to the second question of the same interrogatory for the same reasons; also to the third question of the same interrogatory for the same reasons.

The said defendants, not waiving any other or further right of objection for any other reason to the answers of the witness to any interrogatory propounded to him by complainants, and also reserving the right upon the trial of the cause to move to exclude any part or all of the witness'

answers upon the ground that his testimony is irrelevant to the issues in the cause, or inadmissible, or illegal, such defendants propound the following cross-interrogatories to the witness :

First cross-interrogatory. Have you any personal knowledge of the amount of business done on the Chattahoochee River from Columbus, Georgia, to Chattahoochee, Florida, and all points between, from year to year since 1880 to the present time? Have you any personal knowledge of the amount of business done on the rivers from Columbus, Georgia, to Apalachicola, Florida, and all points between, from year to year since 1880 to the present time? If you answer yea to both questions, tell how much was done from Columbus to Chattahoochee and all points between, and how much from Columbus to Apalachicola and all points between, in each year from 1880 to 1893, both inclusive. Give tonnage, value of goods shipped, and amount of freight paid. How many railroads cross the Chattahoochee River from Columbus to Chattahoochee, Florida, including those at Columbus and Chattahoochee?

636 Do shippers residing along the line of this river use the river as a part of transportation line to the markets? Do not such shippers make use of the river to compel all-rail transportation to carry goods at reasonable rates?

Second cross-interrogatory. How many vessels have come to the port of Apalachicola yearly from 1880 to 1893, inclusive? Is Apalachicola an open port? Do vessels touch there going between ports on the western Gulf ports and the eastern and southern Gulf Coast, and vice versa?

Third cross-interrogatory. If in answer to the fifth direct interrogatory you say that "something" was done to the bar or inlet of the harbor at Apalachicola during the war, and that "it" has not been put in good condition since the war, please state if all, or measurably all, of the cotton along the Chattahoochee, Chipola, Flint, and Apalachicola rivers, and the country tributary thereto, was not carried out of Apalachicola by seagoing vessels in the years 1865, 1866, and 1867? How much cotton was so carried out in each of these years? How much freight was brought into Apalachicola during these years? How did such cotton reach Apalachicola? How did such goods received at Apalachicola reach their destination?

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Attorneys for Defendants, as shown of Record.

It has been verbally suggested to us that A. J. Murat be appointed commissioner to take the answers of the witness Grady. We have no objection to Mr. Murat's appointment.

Nov. 2, 1894.

A. A. WILEY,
ED. BAXTER, &
ROQUEMORE & WHITE,

Attorneys for Defendant, as shown of Record.

(Indorsed :) Interstate Com. Com'n vs. Ala. Mid. Ry. Co. et al. Cross-int'g's to J. E. Brady. Filed Nov. 2, 1894. J. W. Dimmick, clerk.

UNITED STATES OF AMERICA.

Circuit court of the United States for the middle district of Alabama.

To A. J. MURAT:

Know ye, that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine J. E. Grady, who resides at Apalachicola, Fla., as witness in behalf of petitioner, in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein the Interstate Commerce Commission is petitioner and the Alabama Midland Railway Company et als. are defendants, on oath to be by you administered, upon interrogatories & cross-interrogatories annexed to this commission; to take and certify the deposition of the witness, and return the same to our said circuit court, with all convenient speed, under your hand and seal.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of November, A. D. one thousand eight hundred and ninety-four.

Attest:

[SEAL.]

J. W. DIMMICK,

Clerk U. S. Circuit Court, Middle District of Alabama.

638 Deposition of J. E. Grady, witness, sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between the Interstate Commerce Commission, plaintiff, and the Alabama Midland Railway Company et al., defendants.

J. E. GRADY, of Apalachicola, Fla., being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: My name is John E. Grady; my residence, Apalachicola, Fla.; my occupation, merchant for the last ten years and collector of customs for the district of and port of Apalachicola, Fla., during Cleveland's first administration and again collector of the port since November 9, 1893, which position I am now occupying. I have been a resident of Apalachicola, Fla., for the last forty (40) years.

2d. To the second interrogatory he saith: Yes, to a certain extent.

3d. To the third interrogatory he saith: None shipped via Apalachicola, Fla., to my knowledge to the places mentioned.

4th. To the fourth interrogatory he saith: None for the last fifteen (15) years to my knowledge. Shipments from New York and other Northeastern cities by water to Apalachicola, Fla., have to pass around Florida Keys.

5th. To the fifth interrogatory he saith: Steam and sail vessels drawing 18½ feet of water. Some vessels bring goods from and carry goods to Mobile and New Orleans. Others bring and carry merchandise such as lumber and general merchandise from and to Northeastern cities, such as New York, Boston, etc. Goods destined for any of the points

named would be brought to Apalachicola by river steamers and transferred to the vessels in the bay by barges towed by tugs or by lighters. The distance from Apalachicola to the different anchorages in the Bay of Apalachicola is from four to twenty miles. A barge towed by a steam tug can make the trip from one to four hours. Shipments from Mobile and New Orleans, generally brought by vessels of light draught, can be transferred alongside the river steamers at Apalachicola. Goods brought from or shipped to Northeastern cities are generally brought by vessels drawing more water, have to be transferred by barge or lighter to the city, thence put on board river steamers, and the same way for goods shipped from Apalachicola to the points mentioned. Vessels drawing twelve (12) feet of water can enter the Bay of Apalachicola through the west pass entrance and anchor within four (4) miles from the city. Vessels drawing seven (7) feet of water can come alongside the wharf at Apalachicola. Vessels drawing $18\frac{1}{2}$ feet of water can enter the Bay of Apalachicola through the east pass, a distance between 15 to 20 miles from the city. No work was done on said bars during or since the war.

6th. To the sixth interrogatory he saith: Steamers and sail vessels are now plying between Apalachicola, Fla., and Mobile, Ala. Sail vessels and occasionally a steamer calls at Apalachicola for lumber and timber bound for Northeastern cities, and very often bring merchandise for Apalachicola, but none for interior points to my knowledge. A steamer can make the trip from Apalachicola to Mobile and back in 6 days, a sailing vessel from 10 to 15 days, according to the weather. Steam vessels from Apalachicola to Northeastern cities would require from 6 to 8 days; sailing vessels from 15 to 20 days, according to the weather.

639 1st. To the first cross-interrogatory he saith: Have no knowledge as to the exact amount of business done on the Chattahoochee River since 1880 to the present time, as the steamers plying on said river and also on the river from Columbus, Ga., to Apalachicola, Fla., do not enter or clear at the custom-house, hence there is no record kept of the merchandise brought or carried away, or amount of freights paid to them. Six railroads cross the Chattahoochee River. Shoppers residing along the Chattahoochee and other rivers between Columbus, Ga., and Apalachicola, Fla., where there is no railroad are obliged to use the river as a part of transportation line to the markets. I am not aware of such shippers making use of the river to compel all rail transportation to carry goods at reasonable rates.

2nd. To the second cross-interrogatory he saith: About one hundred and fifty vessels yearly, from 1880 to 1893, inclusive; can not state the exact amount, as many vessels are not required to report to the custom-house their arrival or departure. Apalachicola is an open port. Vessels touch here only those who bring and carry cargoes away.

3d. To the third cross-interrogatory he saith: Most of the cotton along the Chattahoochee, Chipola, Flint, and Apalachicola rivers and the country tributary thereto during the years 1865, 1866, and 1867, was brought to Apalachicola by river steamers and carried out by sea-going vessels. About one hundred thousand bales a year. I do not know the amount of freight during those years brought into Apalachicola, but it was a large amount. Freight for interior points along the rivers was carried by river steamers.

JOHN E. GRADY.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness John E. Grady was taken under oath and subscribed by him in my presence on the eighth day of December, 1894, at Apalachicola, in the county of Franklin, State of Florida, and that I have personal knowledge of said witness, and that I am not of counsel in the cause or of kin to any of the parties in interest, or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.]

A. J. MURAT, *Commissioner.*

UNITED STATES OF AMERICA.

640

Circuit court of the United States for the middle district of Alabama.

To IRA C. HERSEY, Esq., 23 Court st., Boston, Mass. :

Know ye, that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine William F. Berry and Daniels C. Prescott as witnesses in behalf of defendants, the Boston & Maine R. R. and the Concord & Montreal R. R., respectively, in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein Interstate Commerce Commission is plaintiff and the Alabama Midland Railway Company et als. are defendants, on oath to be by you administered, upon interrogatories and cross-interrogatories annexed to this commission; to take and certify the deposition of the witness, and return the same to our said circuit court with all convenient speed, under your hand and seal.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of September, A. D. one thousand eight hundred and ninety-four.

Attest :

[SEAL.]

J. W. DIMMICK,

Clerk U. S. Circuit Court, Middle District of Alabama.

641

UNITED STATES OF AMERICA.

Circuit court for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION

vs.

ALABAMA MIDLAND RAILWAY COMPANY ET AL.

} No. 158. In equity.

Interrogatories propounded in behalf of The defendant, The Concord and Montreal Railroad, to Daniels C. Prescott, its general superintendent and traffic manager.

Interrogatory I. State your name, residence, and occupation.

Interrogatory II. What are your duties as general superintendent and traffic manager?

Interrogatory III. Where is the Concord and Montreal Railroad incorporated, and in what States does it do business as a common carrier?

Interrogatory IV. State whether or not the Concord and Montreal Railroad is or ever has been engaged under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, in the business of transportation of persons and property from Troy, in the State of Alabama, thence through several intermediate States to divers points and places within the United States situated without the State of Alabama. Answer fully.

Interrogatory V. State the basis of rates or charges of the Concord and Montreal Railroad for the carriage of persons or property from points on the line of the Concord and Montreal Railroad to points beyond said line and lying south of the Southern Gateways, so called; and especially to Troy, Alabama, and Montgomery, Alabama. Answer fully as to all details, including rates, route, time, mode of carriage, or any other condition or circumstance.

Interrogatory VI. Whether or not the Concord and Montreal Railroad has ever made any rate or charge discriminating in any manner against any point south of the said Southern Gateways, or against the
642 Board of Trade of Troy, Alabama, or against the said Troy, Alabama, whether the same be in favor of Montgomery, Alabama, or otherwise. Answer fully.

Interrogatory VII. State whether or not the Concord and Montreal Railroad is charging and collecting or has ever charged and collected on classed goods to Troy, Alabama, a higher rate than is charged or collected on such shipments to Montgomery, Alabama. Answer fully.

CONCORD & MONTREAL RAILROAD,
By SIGOURNEY BUTLER, *its Solicitor*.

SIGOURNEY BUTLER,
Of Counsel.

(Indorsed:) No. 158. In equity. Interstate Commerce Commis. v. Alabama Midland Ry. Co. et al. Interrogatories in behalf of Concord & Montreal R. R. to Daniels C. Prescott. Filed Aug. 31, 1894. J. W. Dimmick, clerk.

643 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	}	In equity.
<i>vs.</i>		
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.		

The complain't objects to the 4th and 6th interrogatories propounded to Daniels C. Prescott, a witness of the defendant, The Concord & Montreal Railroad Company, on the ground that said interrogatories call for conclusions of law, and to the 5th interrogatory to said witness, on the ground that the matter called for therein is irrelevant and immaterial. Not waiving these objections, the complainant propounds the following cross-interrogatories to said witness:

Cross-interrogatory 1. Between what points does the road, or do the roads, of the Concord & Montreal Railroad Company run? State fully.

Cross-interrogatory 2. Does the Concord & Montreal Railroad Company form a part of any through line or lines from or to Troy, Alabama,

and participate in the transportation of traffic over said line or lines to or from said Troy under a through rate, of which the Concord & Montreal Railroad Company receives a certain proportion for its share of the haul? State whether such through shipments are under a through bill of lading issued by the initial carrier of the line, and naming a total through rate of which the said company receives a certain proportion for its share of the haul. On such hauls or shipments to Troy where does such traffic or shipment originate and what are the through-class rates thereon?

Cross-interrogatory 3. Does the Concord & Montreal Railroad form a part of any through line or lines from or to Montgomery, Alabama, and participate in the transportation of traffic over said line or lines to or from said Montgomery under a through rate, of which the Concord & Montreal Railroad Company receives a certain proportion for its share of the haul? State whether or not such through hauls or shipments are under a through bill of lading issued by the initial carrier of the line, and naming a total through rate of which the Concord & Montreal Railroad Company receives a certain proportion for its share of the haul. On such
644 shipments to Montgomery where does the traffic or shipment originate and what are the through-class rates?

Cross-interrogatory 4. If you say there are such through lines as are enquired about in the preceding two cross-interrogatories, give the names of the carriers constituting each of said lines.

H. D. CLAYTON,
U. S. Attorney.
WM. C. OATES,
L. A. SHAVER,
Att'ys for Petitioner.

(Indorsed :) No. 158. In equity. The Interstate Commerce Com'n vs. The Alabama Midland Ry. et als. Cross to defendant's interrogatories. Filed Sept. 11, 1894. J. W. Dimmick, clerk.

645 UNITED STATES OF AMERICA.
Circuit court for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION
vs.
ALABAMA MIDLAND RAILWAY COMPANY ET AL. } No. 158. In equity.

Interrogatories propounded in behalf of the defendant, The Boston and Maine Railroad, to William F. Berry, its general traffic manager.

- Interrogatory I. State your name, residence, and occupation.
- Interrogatory II. What are your duties as general traffic manager?
- Interrogatory III. Where is the Boston and Maine Railroad incorporated, and in what States does it do business as a common carrier?
- Interrogatory IV. State whether or not the Boston and Maine Railroad is or ever has been engaged under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, in the business of transportation of persons and property from Troy, in the State of Alabama, thence through several intermediate

States to divers points and places within the United States, situated without the State of Alabama. Answer fully.

Interrogatory V. State the basis of rates or charges of the Boston and Maine Railroad for the carriage of persons or property from points on the line of the Boston and Maine Railroad to points beyond said line and lying south of the Southern gateways, so called, and especially to Troy, Alabama, and Montgomery, Alabama. Answer fully as to all details, including rates, route, time, mode of carriage, or any other condition or circumstance.

Interrogatory VI. Whether or not the Boston and Maine Railroad has ever made any rate or charge discriminating in any manner against any point south of the said Southern gateways, or against the Board of
646 Trade of Troy, Alabama, or against the said Troy, Alabama, whether the same be in favor of Montgomery, Alabama, or otherwise? Answer fully.

Interrogatory VII. State whether or not the Boston and Maine Railroad is charging and collecting, or has ever charged and collected, on classed goods to Troy, Alabama, a higher rate than is charged or collected on such shipments to Montgomery, Alabama. Answer fully.

BOSTON AND MAINE RAILROAD,
By SIGOURNEY BUTLER, *its Solicitor*.

SIGOURNEY BUTLER, *of Counsel*.

(Indorsed:) No. 158. In equity. Interstate Commerce Comm. v. Alabama Midland Ry. Co. et al. Interrogatories in behalf of Boston and Maine R. R. to William F. Berry. Filed Aug. 31, 1894. J. W. Dimmick, clerk.

647 In the circuit court of the United States for the middle district of Alabama.

THE INTERSTATE COMMERCE COMMISSION	} In equity.
<i>vs.</i>	
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL.	

The complainant objects to the 4th and 6th interrogatories propounded to William F. Berry, a witness of the defendant, The Boston & Maine Railroad Company, on the ground that said interrogatories call for conclusions of law, and to the 5th interrogatory to said witness, on the ground that the matter called for is irrelevant and immaterial. Reserving the right to insist upon these objections, the complainant propounded the following cross-interrogatories to said witness:

Cross-interrogatory 1. Between what points does the road, or do the roads, of the Boston & Maine Railroad Company run? State fully.

Cross-interrogatory 2. Does the Boston & Maine Railroad form a part of any through line, or lines, from or to Troy, Alabama, and participate in the transportation of traffic over said line, or lines, to or from said Troy under a through rate of which the Boston & Maine Railroad Company receives a certain proportion for its share of the haul? Are such through shipments under a through bill of lading naming a total through rate of which the said company receives a certain proportion for its share of the

haul? On such hauls to Troy where does such traffic or shipment originate, and what are the through class rates?

Cross-interrogatory 3. Does the Boston & Maine Railroad form a part of any through line, or lines, from or to Montgomery, Alabama, and participate in the transportation of traffic over said line, or lines, to or from said Montgomery under a through rate of which the Boston & Maine Railroad Company receives a certain proportion for its share of the haul? State whether or not such through shipments are under a through bill of lading naming a total through rate of which the Boston & Maine Railroad Company receives a certain proportion for its share of the haul. On such shipments to Montgomery where does the traffic or shipments originate, and what are the through class rates?

Cross-interrogatory 4. If you say there are such through lines as are enquired about in the preceding two interrogatories, name the carriers constituting each of said lines.

H. D. CLAYTON,
U. S. Atty.
WM. C. OATES,
L. A. SHAVER,
Attys. for Petitioner.

648 (Indorsed:) No. 158. In equity. The Interstate Commerce Commission vs. The Alabama Midland Ry. et als. Cross to defendants' interrogatories. Filed Sept. 11, 1894. J. W. Dimmick, clerk.

649 Deposition of William F. Berry. Witness sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between the Interstate Commerce Commission, plaintiff, and the Alabama Midland Railway Company et als., defendants.

WILLIAM F. BERRY, of Winchester, Mass., being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

Direct examination:

1st. To the first interrogatory, he saith: Wm. F. Berry; Winchester, Mass.; general traffic manager of Boston and Maine Railroad.

2d. To the second interrogatory, he saith: I have charge of all matters pertaining to the traffic of the Boston and Maine Railroad.

3d. To the third interrogatory, he saith: The Boston & Maine Railroad is incorporated in Maine, New Hampshire, and Massachusetts, and does business as a common carrier in Maine, Massachusetts, New Hampshire, Vermont, and Canada.

4th. To the 4th interrogatory, he saith: Not under a common control or management, but under an arrangement for the through carriage of property.

5th. To the fifth interrogatory, he saith: The Boston and Maine Railroad, in connection with the New York, New Haven & Hartford and the

Pennsylvania railroads, quote a list of arbitrary rates from points on the Boston and Maine Railroad to Hagarstown, Md., the Southern gateway, so called, on property destined to points south thereof, located on connecting lines; said arbitraries are used regardless as to what points in the South the property may be destined, and regardless also of what through rate may have been named from point of shipment to destination; said through rates having been made up by adding the arbitraries up to Hagarstown, Md., to such additional rates as the Southern lines desire to make to Troy or Montgomery, Alabama, or other Southern points.

650 6th. To the sixth interrogatory he saith: They have not.

7th. To the seventh interrogatory he saith: They do not.

Cross-examination:

1st. To the first cross-interrogatory he saith: From Boston, Mass., to Portland, Me., and intermediate points on its eastern and western divisions, so called. From Boston, Mass., to Sherbrook, Canada, and intermediate points on its Southern, Concord, and Passumpsic divisions, so called. From Worcester, Mass., to Rochester, N. H., and intermediate points on its Worcester, Nashua, and Portland division, so called. From Springfield, Mass., to Windsor, Vt., and to Keene, N. H., and intermediate points, via its Connecticut River division, so called, and from Boston, Mass., to Northampton, Mass., and intermediate points.

2d. To the second cross-interrogatory he saith: The Boston and Maine Railroad do not form a part of a through line to Troy, Alabama, but quote arbitrary rates from Boston & Maine Railroad points to Hagarstown, Md., the Southern gateway, so called, to which are added such rates as the Southern roads may quote to cover transportation of the property from Hagarstown, Md., to Troy, Alabama. Property from Boston & Maine Railroad points may be carried under a through bill of lading, naming a through rate from point of shipment on the Boston & Maine Railroad to Troy, Alabama. Said through rate having been quoted by the Southern lines and made up as stated above. Shipments of this kind might, for instance, originate at Lowell or Lawrence, Mass., and the present through class rates from said points, made up as previously stated, to Troy, Alabama, are as follows: 1st class, \$1.44; 2d class, \$1.23; 3d class, \$1.08; 4th class, \$0.93; 5th class, \$0.77; 6th class, \$0.63 per one hundred pounds.

651 3d. To the third cross-interrogatory he saith: Same answer as to the second cross-interrogatory, excepting that the present through class rates to Montgomery, Alabama, made up in same manner as rates to Troy, Alabama, are as follows: 1st class, \$1.14; 2d class, \$0.98; 3d class, \$0.86; 4th class, \$0.73; 5th class, \$0.60; 6th class, \$0.49 per one hundred pounds. You will please understand that the roads north of Hagarstown receive as arbitrary rates from Lowell or Lawrence, Mass., the following: 1st class, \$0.39; 2d class, \$0.34; 3d class, \$0.27; 4th class, \$0.23; 5th class, \$0.18; 6th class, \$0.15 per one hundred pounds, regardless of whether the property is transported to Troy or Montgomery, Alabama.

4th. To the fourth cross-interrogatory he saith: We have denied being a part of any such through lines. The carriers from points named on the Boston & Maine Railroad up to Hagarstown, the Southern gateway,

so called, would be the Boston & Maine Railroad, New York, New Haven & Hartford, and the Pennsylvania Railroad. I am unable to state by what railroads the property would be sent to its destination, there being so many different routes by which it might be forwarded.

WILLIAM F. BERRY.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness William F. Berry was taken down under oath and subscribed by him in my presence on the twentieth day of September, 1894, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, and that proof has been made before me of the personal identity of said witness, and that I am not of counsel in the cause or of kin to any of the parties in interest or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.]

IRA C. HERSEY, *Commissioner*.

652 Deposition of Daniels C. Prescott, witness, sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama in a certain cause therein depending between The Interstate Commerce Commission, plaintiff, and The Alabama Midland Railway Company et als., defendants.

DANIELS C. PRESCOTT, of Concord, N. H., being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

Direct examination:

1st. To the first interrogatory he saith: Daniels C. Prescott; Concord, N. H.; general superintendent and traffic manager of the Concord and Montreal Railroad.

2d. To the second interrogatory he saith: I have charge of the operation of the road and traffic.

3d. To the third interrogatory he saith: The main line is incorporated under laws of New Hampshire. I do not know where the leased line is incorporated. The road does business in New Hampshire and Massachusetts.

4th. To the fourth interrogatory he saith: Not to my knowledge.

5th. To the fifth interrogatory he saith: The basis of rates and charges would be the tariffs in effect at the time of shipment. I have no knowledge of any through rates to or from either point. It would be a matter for the shipper to elect the route. Do not know the time.

6th. To the sixth interrogatory he saith: It never has to my knowledge.

7th. To the seventh interrogatory he saith: Not to my knowledge.

Cross-examination:

1st. To the first cross-interrogatory he saith: From Concord Junction, Mass'tts, to Nashua, N. H.; from Nashua, N. H., to Concord, N. H.; from Manchester, N. H., to Portsmouth, N. H.; from Manchester, N. H., to Henniker, N. H.; from Parkhurst, N. H., to New Boston, N. H.; from

Hooksett, N. H., to Centre Barnstead, N. H. from Concord, N. H., to Berlin, N. H.; from Plymouth, N. H., to No. Woodstock, N. H.; from Lake Port, N. H., to Alton Bay, N. H.; from Tilton, N. H., to Belmont, N. H.; from Wing Road, N. H., to Fabyans, N. H.; from Wing Road, N. H., to Groveton, N. H., and from Jefferson Meadows, N. H., to Jefferson, N. H.

2d. To the second cross-interrogatory he saith : It does not.

3d. To the third cross-interrogatory he saith : It does not.

4th. To the fourth cross-interrogatory he saith : No answer necessary.

DANIELS C. PRESCOTT.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness Daniels C. Prescott was taken down under oath, and subscribed by him in my presence on the twenty-first day of September, 1894, at Boston, in the county of Suffolk and Commonwealth of Massachusetts, and that I have personal knowledge of said witness, and that I am not of counsel in the cause or of kin to any of the parties in interest or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.]

IRA C. HERSEY, *Commissioner*.

654 In the circuit court of the United States, middle district of Alabama.

No. 158. In equity.

Citation.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD and Banking Company of Georgia, and H. M. Comer and others, the receivers thereof; The Savannah, Florida, and Western Railway Company; The Kansas City, Fort Scott and Gulf Railroad Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Wabash Railroad Company; The Sioux City and Pacific Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York

Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company; The Concord and Montreal Railroad Company.

The United States of America to The Alabama Midland Railway Company; The Central Railroad & Banking Company of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida & Western Railway Company; The Kansas City, Fort Scott & Memphis Railroad Company; The Kansas City, Memphis & Birmingham Railroad Company; The Louisville & Nashville Railroad Company; The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville & Terre Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence & Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The Boston & Maine Railroad Company; The New York & New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore & Ohio Railroad Company; The Providence & Springfield Railroad Company; The Cheshire Railroad Company; The Concord & Montreal Railroad Company:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fifth circuit, to be holden at New

Orleans on the second Monday of August, 1895, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the middle district of Alabama, in equity, wherein "The Interstate Commerce Commission" of the United States is appellant, and you, The Alabama Midland Railway Company; The Central Railroad & Banking Company of Georgia, and H. M. Comer, receiver thereof; The Savannah, Florida & Western Railway Company; The Kansas City, Fort Scott & Memphis Railroad Company; The Kansas City, Memphis & Birmingham Railroad Company; The Louisville & Nashville Railroad Company; The Mobile & Ohio Railroad Company; The East Tennessee, Virginia & Georgia Railway Company, and Charles M. McGhee and Henry Fink, the receivers thereof; The Western Railway of Alabama; The Missouri Pacific Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, and S. M. Felton, receiver thereof; The Illinois Central Railroad Company; The Evansville & Terre Haute Railroad Company; The Jeffersonville, Madison & Indianapolis Railroad Company; The Louisville, New Albany & Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence & Stonington Steamship Company; The New York & Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford & New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central & Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich & New York Transportation Company; the Canadian Pacific Railway Company; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company; The Housatonic Railroad Company; The Central Railroad Company of New Jersey; The Boston & Albany Railroad Company; The Boston & Maine Railroad Company; The New York & New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; The Baltimore & Ohio Railroad Company; The Providence & Springfield Railroad Company; The Cheshire Railroad Company; The Concord & Montreal Railroad Company, are appellees, to show cause, if any there be, why the final decree rendered in favor of the said appellees, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of July, in the year of our Lord one thousand eight hundred and ninety-five.

[SEAL.]

JOHN BRUCE,
United States Judge.

Received in office July 30th, A. D. 1895.

W. H. TISDALE,
U. S. Marshal.

Executed by serving a copy of this citation on J. M. White, of the firm of Roquemore & White, and J. M. Falkner, on July 30, 1895, and by serving a copy thereof on July 31st, 1895, on A. A. Wiley, solicitors of record for the defendants named in the said citation.

W. H. TISDALE,

U. S. Marshal.

By WM. F. ADAMS,

Deputy U. S. Marshal.

Filed July 18, 1895.

J. W. DIMMICK, *Clerk.*

UNITED STATES OF AMERICA,

Middle District of Alabama:

I, J. W. Dimmick, clerk of the United States circuit court in and for the middle district of Alabama, do hereby certify the foregoing to be a true, full, correct, and complete transcript of the record and proceedings had in the case wherein the Interstate Commerce Commission was complainant and the Alabama Midland Railway Company and others were respondents, as appears of record and now remaining of file in my office.

In testimony whereof I hereunto set my hand and affixed the seal of said circuit court, at Montgomery, Alabama, this the 26 day of August, A. D. 1895.

[SEAL.]

J. M. DIMMICK, *Clerk.*

408 United States circuit court of appeals, fifth circuit. November term, 1895.

[Extract from minutes.]

WEDNESDAY, *February 5, 1896.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
 appellees.

This cause came on to be heard this day, and after argument by Mr. L. A. Shaver for the appellant, further hearing was postponed until to-morrow.

409 United States circuit court of appeals, fifth circuit. November term, 1895.

[Extract from minutes.]

THURSDAY, *February 6, 1896.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
 appellees.

This cause came on again to be further heard this day and was submitted to the court after argument by Mr. L. A. Shaver for the appellant and by Mr. Ed. Baxter for the appellees.

410 United States circuit court of appeals, fifth circuit. November term, 1895.

[Extract from minutes.]

TUESDAY, *June 2, 1896.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
 appellees.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the middle district of Alabama and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of said circuit court in this cause be, and the same is hereby, affirmed at the cost of the appellant.

411

Petition for Appeal.

United States circuit court of appeals, fifth judicial circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
 appellees.

The Interstate Commerce Commission, by J. Ward Gurley, jr., United States attorney, under the direction of the Attorney-General of the

United States, represents that in the final decree of said circuit court of appeals, rendered on the 2nd day of June, 1896, there is manifest error to its injury; and therefore, being a department of the Government of the United States, it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

(Signed) J. WARD GURLEY, JR.,
United States Attorney for the Eastern District of Louisiana.

(Signed) L. S. SHAVER,
Of Counsel for the Interstate Commerce Commission.

(Endorsed:) Filed June 20, 1896. J. M. McKee, clerk.

413 *Assignment of errors.*

United States circuit court of appeals, fifth judicial circuit.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

And now comes the Interstate Commerce Commission, by J. Ward Gurley, jr., United States attorney for the eastern district of Louisiana, under the direction of the Attorney-General of the United States, and charges that in the decree rendered by said circuit court of appeals in the above-entitled cause on the 2d day of June, 1896, and in the record and proceedings in said court there is manifest error to its injury in this, to wit:

414 1. Said circuit court of appeals erred in affirming the decree in said cause of the circuit court of the United States for the middle district of Alabama, dismissing the bill of the Interstate Commerce Commission.

2. Said circuit court of appeals erred in not reversing the decree in said cause of the circuit court of the United States for the middle district of Alabama.

3. Said circuit court of appeals erred in not rendering a decree for the enforcement of the entire order of the Interstate Commerce Commission involved in said cause.

4. Said circuit court of appeals erred in not rendering a decree for the enforcement of that portion or subdivision of said order which prescribes the rates to be charged for services performed in the transportation of class goods from Cincinnati, Ohio, Louisville, Kentucky, and St. Louis, Missouri, to Troy, Alabama.

415 5. Said circuit court of appeals erred in not rendering a decree for the enforcement of that portion or subdivision of said order which prescribes the rates to be charged for services performed in the transportation of class goods from Baltimore, New York, and other northeastern points to Troy, Alabama.

6. Said circuit court of appeals erred in not rendering a decree for the enforcement of that portion or subdivision of said order which prescribes the rates to be charged for services performed in the transportation of cotton from Troy, Alabama, to the Atlantic ports, Brunswick, Charleston, Savannah, West Point, or Norfolk, for export via those ports.

7. Said circuit court of appeals erred in not rendering a decree for the enforcement of that portion or subdivision of said order which prescribes the rates to be charged for services performed in the transportation of cotton from Troy, Alabama, to the Atlantic ports, Brunswick, Savannah, or Charleston, as points of destination.

8. Said circuit court of appeals erred in not rendering a decree 416 for the enforcement of that portion or subdivision of said order which prescribes the rate to be charged for services performed in the transportation of cotton from Troy, Alabama, via Montgomery, Alabama, to New Orleans, Louisiana.

9. Said circuit court of appeals erred in not rendering a decree for the enforcement of that portion or subdivision of said order which prescribes the rates to be charged for services performed in the transportation of phosphate rock from the South Carolina and Florida phosphate fields to Troy, Alabama.

10. Said court erred in ignoring, in effect, the fact that Troy is shown by the evidence in said cause to be a competitive point as well as Montgomery, Columbus, and Eufaula.

11. Said court erred in holding in effect that, while the existence of long through competing lines of transportation to Montgomery would naturally operate to lower rates to that city, the existence of such lines to Troy should not have the same effect on rates to that city.

12. Said court erred in holding that competition between lines 417 of transportation to Montgomery is a circumstance which, under section 3 of the act to regulate commerce, will justify the giving to that city a preference or advantage in rates over Troy.

13. Said court erred in holding that such competition constitutes a dissimilar circumstance or condition under section 4 of the act to regulate commerce.

14. Said court erred in holding in effect that competition of carrier with carrier, both subject to the act to regulate commerce, will justify a departure from the rule of the 4th section of said act without authority from the Interstate Commerce Commission under the proviso to that section.

15. Said court erred in not holding that, if competition could in any event relieve a carrier from the rule of the 4th section of the act to regulate commerce or justify discrimination in any form, such competition must be actual—not merely possible or probable—and of controlling force, and in respect to traffic important in amount.

16. Said court erred in not holding, as appellant contended, that 418 competition which will be brought into action only by unreasonable or excessive rates is not such competition as will relieve a carrier from the rule of the 4th section of the act to regulate commerce or justify discrimination in any form, and that to allow the natural outcome or result of excessive rates to be made the ground for a license to discriminate is to permit the carrier to take advantage of his own wrong.

17. Said court erred in holding that the competition proven in said cause justifies discrimination to the extent shown to exist under the rates complained of.

18. Said court erred in not holding that the rates prescribed by the Interstate Commerce Commission in its order make due allowance for

any dissimilarity of circumstance or condition shown to exist affecting transportation to Montgomery and Troy, respectively.

19. Said court erred in holding in effect that, because the proportion of the through rates from St. Louis, Louisville, and Cincinnati to Troy, charged for the haul from Montgomery to Troy, is reasonable as a local rate on a strictly local shipment originating at Montgomery and terminating at Troy, it is also reasonable as a proportion of said through rates.

419 20. Said court erred in finding as a matter of fact that "the Alabama River, open all the year round, is capable, if need be, of bearing to Mobile on the sea the burden of all the goods of every class that pass to and from Montgomery."

21. Said court erred in finding as matter of fact, in the absence of any proof to that effect, that "the competition of the railway lines" (to Montgomery) "is not stifled, but is fully recognized, intelligently and honestly controlled and regulated by the traffic association" (meaning the Southern Railway & Steamship Association) "in its schedule of rates."

22. In its opinion in said cause, said court stated as a material matter that "there is not suggestion in the evidence that the traffic managers who represent the carriers that are members of that association" (Southern Railway & Steamship Association) "are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them or is likely to lead them to unjustly discriminate against Troy."

The court erred in thus holding in effect that proof of that character is necessary in order to make out a case of unjust discrimination under the law and that it is a proper inference from the failure to make such proof, that the rates in question are not unjustly discriminating as against Troy.

23. Said court erred in holding that the rates to Montgomery are regulated and controlled by competition between the transportation lines to that city, when it appears that said rates are established by agreement between the carriers composing said lines as members of the Southern Railway & Steamship Association.

24. Said court erred in finding as a matter of fact that the rates by the rail lines to Montgomery have been reduced by water competition by the Alabama River line "to the level of the lowest practical paying water rate."

25. Said court erred in holding in effect that if a dissimilarity of circumstance or condition justifying some discrimination in rates exists, the extent of the discrimination thus authorized is a matter for the determination of the carriers alone, and that "carriers are better qualified to adjust such matters than any court or board of public administration" and "it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business."

(Signed)

J. WARD GURLEY, JR.,

United States Attorney for the Eastern District of Louisiana.

(Signed)

L. A. SHAVER,

Of Counsel for the Interstate Commerce Commission.

(Endorsed:) Filed June 20, 1896. J. M. McKee, clerk.

422

Order allowing appeal.

United States circuit court of appeals, fifth judicial circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., }
 appellees.

In this cause the Interstate Commerce Commission, by J. Ward Gurley, jr., United States attorney, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 2nd day of June, 1896, to the Supreme Court of the United States, and the said Interstate Commerce Commission being a department of the Government, and it appearing that the matter in dispute in said cause exceeds

the sum of \$5,000.00, exclusive of costs, it is therefore ordered
 423 that said appeal be, and the same is hereby, granted and made returnable on the 20th day of July, 1896.

(Signed)

DON A. PARDEE,

Circuit Judge.

JUNE 20th, 1896.

(Endorsed:) Filed June 20, 1896. J. M. McKee, clerk.

424 United States circuit court of appeals, fifth circuit. November term, 1895.

[Filed June 2, 1896.]

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, }
v.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL., } No. 430.
 appellees.

Appeal from the circuit court of the United States for the middle district of Alabama. Before Pardee and McCormick, circuit judges, and Boorman, district judge.

McCormick, circuit judge, delivered the opinion of the court:

425 Troy is situated between the Alabama and Chattahoochee rivers, 52 miles by the shortest railroad route from Montgomery, 80 miles from Eufaula, and 35 miles from Columbus. It is a city of four of five thousand inhabitants. On June 29, 1892, the Board of Trade of Troy filed with the Interstate Commerce Commission, the appellant, a complaint against the Alabama Midland and the Georgia Central railroads and their numerous connections, which contained six charges of violations of the provisions of the act to regulate commerce. Those charges are as follows:

"1. That the Alabama Midland and Georgia Central and their connections unjustly discriminate against Troy and in favor of Montgomery, in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields and only \$3 per ton on such

shipments to Montgomery, the longer distance point by both said roads, and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland has to be hauled through Troy.

426 "2. That the rates on cotton established by said two roads and their connections on shipments to the Atlantic seaports, Brunswick, Savannah, and Charleston, unjustly discriminate against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy is 47 cents, and that from Montgomery, the longer distance point, is only 40 cents, and that such shipments from Montgomery over the road of the Alabama Midland have to pass through Troy.

"3. That on shipment for export from Montgomery and other points within 'the jurisdiction' of the Southern Railway and Steamship Association to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point, and Norfolk, a lower rate is charged than the regular published tariff rate to such seaports, in that Montgomery and such other points are allowed by the rules of said association to ship through to Liverpool via any these seaports at the lowest through rate via any one of them on the day of shipment, which may be much less than the sum of the regular published rail rate and the ocean rate via the port of shipment; that this reduction is taken from the published tariff rail rate to the port of shipment; and that this privilege being denied to Troy is an unjust discrimination against Troy in favor of Montgomery and such other favored cities, and that it is also a discrimination against shipments which terminate at such seaport in favor of shipments for export.

427 "4. That the Alabama Midland and the defendant carriers connecting and forming lines with it from Baltimore, New York, and the East, to Troy and Montgomery, charge and collect a higher rate on shipments of class goods from those cities to Troy than on such shipments through Troy to Montgomery, the latter being the longer distance point by 52 miles.

"5. That the rate on 'class' goods from Western and Northwestern points established by the defendants forming line from those points to Troy, are relatively unjust and discriminatory as against Troy, when compared with the rates over such lines to Montgomery and Columbus.

"6. That Troy is unjustly discriminated against in being charged on shipments of cotton via Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and the Georgia Central."

The Alabama Midland and the Central Georgia, and many of their connections, immediate and remote, answered the complaint with a general denial of the charge of violating the provisions of the act, supported by such special matter as their respective situations furnished. The only

428 feature of these matters specially plead now requiring notice is the allegation that the circumstances and conditions affecting rates at

Montgomery and Troy are substantially dissimilar. After due examination, taking proof, and hearing argument of counsel for the respective parties, and considering of the case until August 15, 1893, the Commission made its report, reviewing all the evidence, the oral arguments and the briefs of counsel, the pertinent provisions of the act, the decisions on it theretofore made by them and by the courts, and concluding thus: "In pursuance of the conclusions arrived at in this case, it is ordered that the roads participating in the traffic involved cease and

desist (1) from charging and collecting on class goods shipped from Louisville, St. Louis, and Cincinnati to Troy a higher rate than is now charged and collected on such shipments to Columbus and Eufaula; (2) from charging and collecting on cotton shipped from Troy via Montgomery to New Orleans a higher through rate than 50 cts. per hundred pounds; (3) from charging and collecting on shipments of cotton from Troy for export via the Atlantic seaports, Brunswick, Savannah, Charleston, West Point, and Norfolk, a higher rate to those ports than is charged and collected on such shipments from Montgomery; (4) from charging and collecting on cotton shipped from Troy to Brunswick, Savannah, and Charleston a higher rate than is charged and collected on such
 429 shipments from Montgomery through Troy to those ports; (5), from charging and collecting on class goods, shipped from New York, Baltimore, and the Northeast, to Troy, a higher rate than is charged and collected on such shipments to Montgomery, and (6) from charging and collecting on phosphate rock shipped from South Carolina and Florida fields to Troy a higher rate than is charged and collected on such shipments through Troy to Montgomery." A formal order to the same effect was made and filed among the records of the Commission requiring compliance therewith on or before September 10, 1893, and a notice embodying this order, together with a copy of the report and opinion of the Commission in the case was forthwith duly served on each of the defendant corporations.

The carriers, relying on the defenses interposed, did not comply with the order, and on January 20, 1894, this suit was brought. It progressed to the hearing, and on July 3, 1895, the circuit court delivered its opinion adverse to the ultimate findings and conclusions made and shown in the report and order of the Commission, and made the decree from which this appeal is taken, "that this cause be, and the same is
 hereby, dismissed out of this court." It will be observed that

430 charges 1, 2, 3, and 4, as made by the Board of Trade of Troy, allege departures from the "long and short haul" rule of the fourth section of the act, and charges 5 and 6 present another form of alleged unjust discrimination or undue preference. The charges 4 and 5 are the two principal ones in the complaint, and to these the bulk of the testimony relates. The charge 4 is that on shipments of class goods from New York, Baltimore, and the East to Troy and Montgomery, respectively, over the Alabama Midland as the terminal road, higher rates are charged to Troy than on such shipments through Troy, fifty-two miles further on to Montgomery. Charge 5 involves the through rates on class goods from Louisville and other Ohio River points to Troy, on the one hand, and to Montgomery and Columbus on the other, the complaint being that in their rates to these points respectively the carriers unjustly discriminate against Troy. There is no substantial dispute as to the respective rates charged, the distances, the character of service, the classification of the freight, the volume of trade going to or through the respective points, and of that originating at them, and the number of railroads reaching each that could compete for the carriage of goods. The Commission insists that there is no actual subsisting all-
 431 water route competition at Montgomery, Columbus, or Eufaula, and that there is practically no competition of any kind at any point within the field of this inquiry, because at all the points

claimed to be competitive the rates are fixed by agreement between the carriers. The counsel for the Commission contend: First, that competition between carriers (and there is none other attempted to be proven in this case) does not constitute such a substantial dissimilarity of circumstances and conditions as will under the interstate-commerce law (without authority from the Commission where the rule of the fourth section is involved) justify departures from the rule of a relative equality in rates as between different localities laid down in the third and fourth sections of the law; second, that if competition can under any circumstances justify departures from the rule of the law, the competition, if any, shown in this case can not be invoked for that purpose; third, if the competition alleged in this case can justify any discrimination whatever against Troy in favor of her competitors in business, Montgomery and Columbus, it does not justify discrimination to the extent shown; fourth, that the order of the Commission in question in this case makes allowance for whatever dissimilarity of circumstances or condition as between

432 Montgomery and Columbus, on the one hand, and Troy, on the other, may have been proven." After a full hearing in the circuit court the judge of that court announced his views of the case in a carefully considered opinion, summing up his ultimate findings as follows:

"In any aspect of the case it seems impossible to consider this complaint of the Board of Trade of Troy against the defendant railroad companies, particularly the Midland and Georgia Central railroads, in the matter of the charge upon property transported on their roads to or from points east or west of Troy, as specified and complained of, obnoxious to the 4th or any other section of the interstate-commerce act. The conditions are not substantially the same and the circumstances are dissimilar, so that the case is not within the statute."

On March 30, 1896, the Supreme Court announced its decision in *The Texas and Pacific Railway Company v. The Interstate Commerce Commission*, known as the *Dupont Case*, and in the appeals in *The Cincinnati, New Orleans and Texas Pacific Railway Company v. The Interstate Commerce Commission*, known as the *Social Circle Case*. In the opinion in the *Dupont Case*, the court says: "Commerce, in its largest

433 sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it and not to hamper or destroy it is naturally to be attributed to Congress.

The very terms of the statute, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced, but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of the producers, shippers, and consumers should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act. The principal purpose of the second section is to prevent unjust discrimination between shippers. It implies that in deciding whether differences in charges in given cases were or were not unjust there must be a consideration of the several questions whether the services rendered were 'like and cotemporaneous,' whether the kinds of traffic were 'like,'

whether the transportation was effected under 'substantially similar circumstances and conditions.' To answer such questions in any case

coming before the Commission requires an investigation into the
434 facts; and we think that Congress must have intended that what-

ever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not 'unjust.' Some charges might be unjust to shippers, others might be unjust to the carriers. The rights and interests of both must, under the terms of the act, be regarded by the Commission. The third section forbids any undue and unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions not of law, but of fact. The mere circumstance that there is in a given case a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as

calling in given cases for a preference or advantage are facts and
435 matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable. When the section says that no locality shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, it does not mean that the Commission is to regard only the welfare of the locality or community where the traffic originates, or where the goods are shipped on the cars. The welfare of the locality to which the goods are sent is also, under the terms and spirit of the act, to enter into the question. The same observations are applicable to the fourth section, or the so-called long and short haul provisions, and it is unnecessary to repeat them." Further on in the opinion the court quotes at length and without any note of qualification the language of Mr. Justice Wills and Lord Herschell in *Phipps and others v. London & N. W. Ry. Co.* (2 Q. B., 248), in which is embraced this language of Chief Justice Erle, used in *Palmer v. London and Southwestern Railway Co.* (10 L. R., 593): "I beg to say that the argument from authority seems to me to be without conclusive force in guiding the exercise of this jurisdiction; the question whether undue prejudice has been caused being a question of fact depending on the matters proved in each cause." When the *Phipps' Case*

was before the railway commissioners, Mr. Justice Wills, in the
436 course of his opinion, said: "I observe that these are, in my judgment, eminently practical questions (adjusting rates to circumstances and conditions), and if this court once attempts the hopeless task of dealing with questions of this kind with any approach to mathematical accuracy and tries to introduce a precision which is unattainable in commercial and practical matters, it would do infinite mischief and no good." In reference to which Lord Herschell, when the case was on appeal, said: "I quite agree with Mr. Justice Wills, that it is impossible to exercise a jurisdiction, such as is conferred by this section, by any process of mere

mathematical or arithmetical calculation. When you have a variety of circumstances differing in the one case from the other, you can not say that a difference of circumstances represents or is equivalent to such a fraction of a penny difference of charge in the one as compared with the other. A much broader view must be taken, and it would be hopeless to attempt to decide a case by any attempted calculation." After reviewing the American cases, the Supreme Court says: "The conclusions that we draw from the history and language of the act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the act is to promote and facilitate commerce by the adoption of regulations
 437 to make changes for transportation just and reasonable and to forbid undue and unreasonable preferences or discriminations; that in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; that among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community
 438 which is to receive and consume the commodities are to be considered; that if the Commission, instead of confining its action to redressing, on complaint made by some particular person, firm, corporation, or locality, some specific disregard by common carriers of provisions of the act, proposes to promulgate general orders, which thereby become rules of action to the carrying companies, the spirit and letter of the act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country. It may be said that it would be impossible for the Commission to frame a general order if it were necessary to enter upon so wide a field of investigation, and if all interests that are liable to be affected were to be considered. This criticism, if well founded, would go to show that such orders are instances of general legislation, requiring an exercise of the lawmaking power, and that the general orders made by the Commission in March, 1889, and January, 1891, instead of being regulations calculated to promote and enforce the express provision of the act, are themselves laws of wide import, destroying some branches of commerce that
 439 have long existed and undertaking to change the laws and customs of transportation in the promotion of what is supposed to be public policy." In the opinion in the Social Circle Case it is clearly held

that the question whether the circumstance and conditions are or are not substantially similar is one of fact and touching the power of the Commission to fix rates, the court says:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below, and is discussed in the briefs of counsel.

"We do not find any provisions of the act that expressly or by necessary implication confers such a power.

"It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate, in a given case, depends on the facts, and the function of the Commission is to consider these facts and give them their proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the Commission to be reasonable.

440 "We prefer to adopt the view expressed by the late Justice Jackson, when circuit judge, in the case of the Interstate Commerce Commission v. Baltimore and Ohio Railroad Co. (43 Fed. Rep., 37), and whose judgment was affirmed by this court. (145 U. S., 263.)

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits."

Only two railroads, the Alabama Midland and the Georgia Central reach Troy. Each of these roads has connections with other lines, parties hereto, reaching all the long-distance markets mentioned in these proceedings. The Commission finds that no departure from the long and short haul rule of the fourth section of the statute, as against Troy as the shorter distance point and in favor of Montgomery as the

441 longer distance point, appears to be chargeable to the Georgia Central. The rates in question when separately considered are not unreasonable or unjust. As a matter of business necessity they are the same by each of the railroads that reach Troy. The Commission concludes that as related to the rates to Montgomery, Columbus, and Eufaula, the rates to and from Troy unjustly discriminate against Troy and in the case of the Alabama Midland violate the long and short haul rule.

The volume of population and of business at Montgomery is many times larger than it is at Troy. There are many more railway lines running to and through Montgomery connecting with all the distant markets. The Alabama River, open all the year, is capable, if need be, of bearing to Mobile, on the sea, the burden of all the goods of every class that pass to or from Montgomery. The competition of the railway lines is not stifled, but is fully recognized, intelligently and honestly controlled and regulated by the traffic association in its schedule of rates. There

is no suggestion in the evidence that the traffic managers who represent the carriers that are members of that association are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them, or is likely to lead them, to unjustly discriminate against Troy. When the rates to Montgomery were higher a few years ago than now, actual active water-line competition by the river came in, and the rates were reduced to the level of the lowest practical paying water rates, and the volume of carriage by the river is now comparatively small, but the controlling power of that water line remains in full force and must ever remain in force as long as the river remains navigable to its present capacity. And this water line affects to a degree less or more all the shipments to or from Montgomery from or to all the long-distance markets. It would not take cotton from Montgomery to the South Atlantic ports for export, but it would take the cotton to the points of its ultimate destination if the railroad rates to foreign marts through the Atlantic ports were not kept down to or below the level of profitable carriage by water from Montgomery through the port of Mobile. The volume of trade to be competed for, the number of carriers actually actively competing for it, a constantly open river present to take a large part of it whenever the railroad rates rise up to the mark of profitable water carriage seem to us, as they did to the circuit court, to constitute circumstances and conditions at Montgomery substantially dissimilar from those existing at Troy and to relieve the carriers from the charges preferred against them by its board of trade. We do not discuss the third and fourth contention of the counsel for the appellant further than to say that within the limits of the exercise of intelligent good faith in the conduct of their business and subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. The carriers are better qualified to adjust such matters than any court or board of public administration, and within the limitations suggested it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business.

We affirm the decree of the circuit court.

444 The United States of America, fifth judicial circuit.

The President of the United States to The Alabama Midland Railway Company; The Central Railroad and Banking Company of Georgia, and H. M. Comer and others, the receivers thereof; The Savannah, Florida and Western Railway Company; The Kansas City, Fort Scott and Gulf Railroad Company; The Kansas City, Memphis and Birmingham Railroad Company; The Louisville and Nashville Railroad Company; The Mobile and Ohio Railroad Company; The East Tennessee, Virginia and Georgia Railway Company; The Western

Railway of Alabama; The Missouri Pacific Railway Company; The Wabash Railroad Company; The Sioux City and Pacific Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Illinois Central Railroad Company; The Evansville and Terre Haute Railroad Company; The Jeffersonville, Madison and Indianapolis Railroad Company; The Louisville, New Albany and Chicago Railway Company; The Clyde Steamship Company; The Ocean Steamship Company of Savannah; The Providence and Stonington Steamship Company; The New York and Texas Steamship Company; The Metropolitan Steamship Company; The Citizens' Steamboat Company; The Hartford and New York Transportation Company; The Grand Trunk Railway Company of Canada; The New Haven Steamboat Company; The People's Line Steamers; The Maine Steamship Company; The New York Central and Hudson River Railroad Company; The Central Vermont Railroad Company; The Bridgeport Steamboat Company; The Norwich and New York Transportation Company; The Canadian Pacific Railway Company; The Minneapolis, St. Paul and Sault Ste. Marie Railroad Company; The Housatonic Railroad Company; The Central Railway Company of New Jersey; The Boston and Albany Railroad Company; The Boston and Maine Railroad Company; The New York and New England Railroad Company; The Old Colony Railroad Company; The Fitchburg Railroad Company; The Maine Central Railroad Company; The Connecticut River Railroad Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company; The Baltimore and Ohio Railroad Company; The Providence and Springfield Railroad Company; The Cheshire Railroad Company; The Concord and Montreal Railroad Company; or to Ed. E. Baxter, A. A. Wiley, or John D. Roquemore, their attorneys of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellant and you were appellees, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Don A. Pardee, United States circuit judge for the fifth judicial circuit, this 20th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

DON A. PARDEE,
Circuit Judge.

445½ (Indorsed:) Service accepted July 11, 1896. A. A. Wiley, of counsel for defendants. Executed further by leaving a copy of this citation with Mr. Hunter Roquemore, for J. D. Roquemore, this 14th day of July, 1896. W. H. Tisdale, U. S. marshal; A. C. Smith, chief deputy, middle Dis. of Ala., Montgomery, Ala.

446 In the United States circuit court of appeals for the fifth circuit.

THE INTERSTATE COMMERCE COMMISSION,
vs.
 THE ALABAMA MIDLAND RAILWAY COMPANY ET AL. }

I hereby accept service of the citation issued on the appeal from the United States circuit court of appeals for the fifth circuit, to the Supreme Court of the United States.

ED BAXTER,
Solicitor for Appellees, as shown of record.

NASHVILLE, TENN., June 29th, 1896.

447 United States circuit court of appeals for the fifth circuit.

I, James M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the above and foregoing 447 pages, numbered from 0 to 446, inclusive, contain a true copy of the record, pleas, process, proceedings, and all papers in the case of The Interstate Commerce Commission, appellant, v. The Alabama Midland Railway Company et al., appellees, No. 430, November term, 1895, and the original citation of appeal, together with the acceptances of service and the return of service thereof upon counsel for the appellees, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 15th day of July, A. D. 1896.

[SEAL.]

JAMES M. MCKEE,
*Clerk of the United States Circuit Court of Appeals
 for the Fifth Circuit.*

(Indorsement on cover:) Case No. 16342. Term No. 563. The Interstate Commerce Commission, appellant, vs. The Alabama Midland Railway Company et al. U. S. circuit court of appeals, fifth circuit. Filed July 20, 1896. Supreme Court U. S. Clerk's office. Received July 3, 1896.

N^o 563 203

Motion papers

Filed Oct 13, 1896



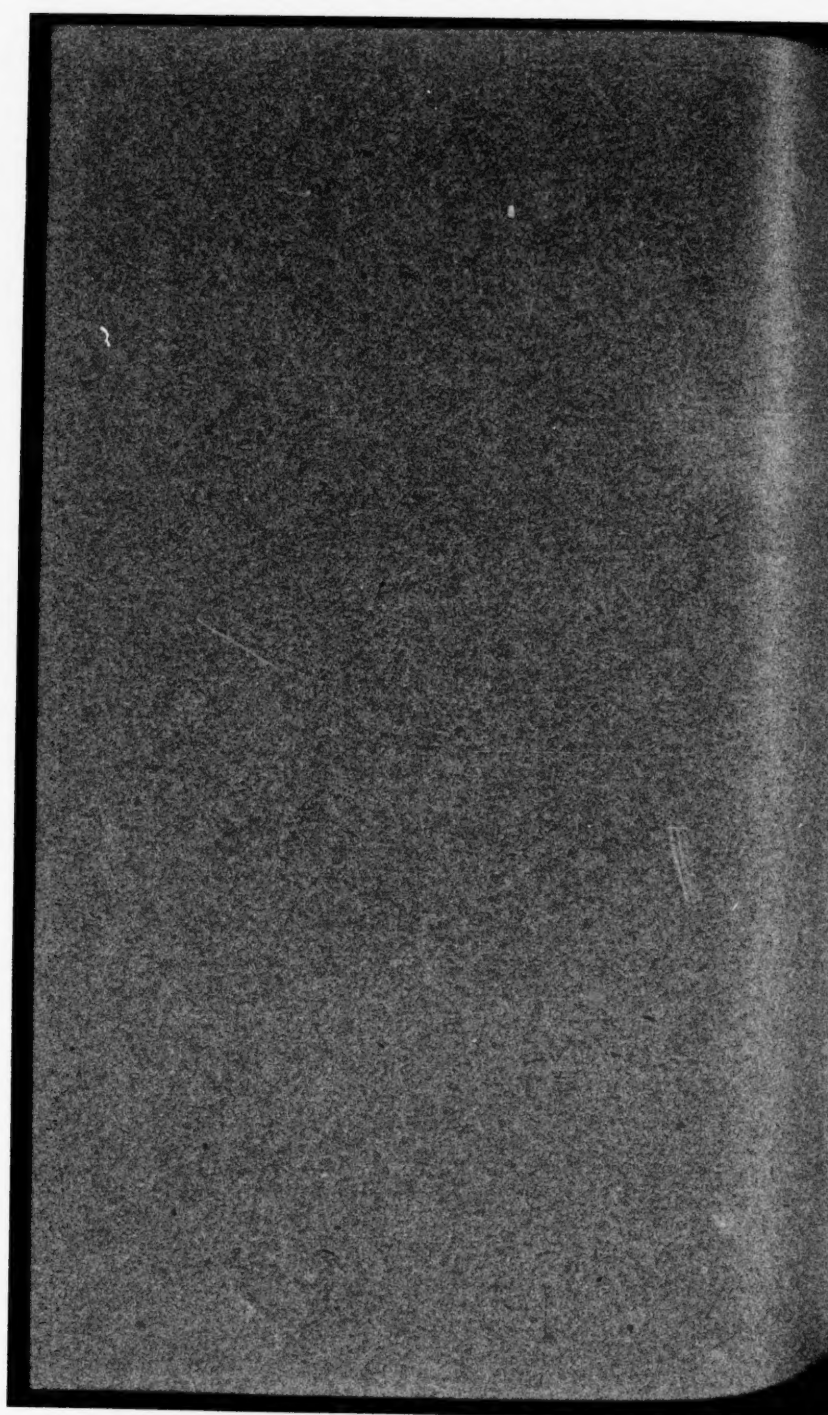
In the Supreme Court of the United States

October Term, 1896

THE INTERSTATE COMMERCE COMMISSION,
appellant,
v.
THE ALABAMA MIDLAND RAILWAY COM-
pany et al.

No. 563.

MOTION TO ADVANCE



In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION,	}	No. 563.
appellant,		
v.		
THE ALABAMA MIDLAND RAILWAY COM- pany et al.		

MOTION TO ADVANCE.

The Solicitor-General, at the request and on behalf of the appellant in the above-entitled cause, respectfully moves the court to advance the same on the docket for hearing during the present term.

The case presents more definitely the questions which arise under section 4 of the act to regulate commerce, known as the "Long and short haul clause," than any other case which has been before the court.

It also presents clearly the question as to the authority of the Interstate Commerce Commission, in a case before it, on issue joined, and after due consideration of all material facts, to find what is a reasonable rate to be charged by a carrier and to order its adoption.

The Commission and its attorneys, on the one hand, and the carriers and their attorneys, on the other hand, differ in their construction of what is said by this court in the case of *Texas and Pacific Railway Company v. Interstate Commerce Commission* (162 U. S., 196), on the question as to the power of the Commission to prescribe a reasonable rate. This is a fundamental matter, and it is important to the carriers, the Commission, and the public generally that it be speedily and definitely settled.

Counsel for the appellees, Mr. Ed. Baxter, concurs in this motion, and suggests that if the case shall be advanced, a date about the middle of January, 1897, for its hearing would suit all counsel concerned, if agreeable to the court.

HOLMES CONRAD,
Solicitor-General.

○

IN SENATE, JANUARY 11, 1911.

REPORT

NO. 100



THE INTERSTATE COMMERCE COMMISSION
APPELLANT,

THE ALABAMA MIDLAND RAILWAY COMPANY
ET AL, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

ENTRY FOR APPELLANT.

L. A. SEAY,
Of Counsel.



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In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

V.

THE ALABAMA MIDLAND RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLANT.

I.

STATEMENT OF CASE.

This is a proceeding in equity under section 16 of the "Act to regulate commerce" for the enforcement of an order of the appellant, The Interstate Commerce Commission, against The Alabama Midland Railway Company, The Georgia Central Railway Company, and a number of other carriers, connections of and forming through lines with those two railways. In the case before the Commission in which the order in question was made, the complaint against these carriers was filed by the Board of Trade of Troy, Ala., and was, in substance, that

their rates to Troy from certain points were unjustly discriminatory against Troy and unduly preferential to Montgomery, Ala., and that their rates from certain other points were unjustly discriminatory against Troy and unduly preferential to Montgomery, Ala., and Columbus, Ga.

These three cities, Troy, Montgomery, and Columbus, compete for business in territory adjacent to Troy. Troy is situated at the intersection of the roads of the Alabama Midland and Georgia Central companies; Montgomery is situated on the Alabama River at the terminus of the Alabama Midland Road, 52 miles northwest from Troy, and Columbus on the Georgia Central Road where it crosses the Chattahoochee River, about 80 miles northeast from Troy.

The complaint of the Board of Trade of Troy contained (as set forth in the report of the Commission, Record, pp. 52-53) six charges or specifications of violations of the act to regulate commerce, as follows:

"1. That the 'Alabama Midland and Georgia Central and their connections unjustly discriminate against Troy and in favor of Montgomery' in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields, and only \$3 per ton on such shipments to Montgomery, the longer-distance point by both said roads, and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland has to be hauled through Troy.

"2. That the rates on cotton established by said two roads and their connections on shipments to the Atlantic seaports—Brunswick, Savannah, and Charleston—unjustly discriminate against Troy and in favor of Montgomery, in that the rate per 100 pounds from Troy is 47 cents, and that from Montgomery, the longer distance point, is only 40 cents, and that such shipments from Montgomery over the road of the Alabama Midland have to pass through Troy.

"3. That on shipments for *export* from Montgomery and other points within 'the jurisdiction' of the Southern Railway and Steamship Association to the Atlantic seaports—Brunswick, Savannah, Charleston, West Point, and Norfolk—a lower rate is charged than the regular published tariff rate to such

seaports, in that Montgomery and such other points are allowed by the rules of said association to ship through to Liverpool via any of those seaports at the lowest through rate via any one of them on the day of shipment, which may be much less than the sum of the regular published rail rate and the ocean rate via the port of shipment; that this reduction is taken from the published tariff rail rate to the port of shipment; and that this privilege, being denied to Troy, is an unjust discrimination against Troy in favor of Montgomery and such other favored cities, and that it is, also, a discrimination against shipments which terminate at such seaport in favor of shipments for export.

"4. That the Alabama Midland and the defendant carriers connecting and forming lines with it from Baltimore, New York, and the East to Troy and Montgomery charge and collect a higher rate on shipments of class goods from those cities to Troy than on such shipments through Troy to Montgomery, the latter being the longer-distance point by 52 miles.

"5. That the rates on 'class' goods from western and north-western points established by the defendants forming lines from those points to Troy are relatively unjust and discriminatory as against Troy when compared with the rates over such lines to Montgomery and Columbus.

"6. That Troy is unjustly discriminated against in being charged on shipments of cotton via Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and the Georgia Central."

The provisions of the act to regulate commerce which are directly involved in these charges are contained in *section 3*, which forbids *undue or unreasonable preferences* or advantages between persons, *localities*, etc., and *section 7*, which declares unlawful the greater charge in the aggregate "for a shorter than a longer distance over the same line, in the same direction, the shorter being included in the longer," known as the "long and short haul" rule of the statute. These provisions of the act, for convenience of reference, are given below:

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or *locality*, or any particular description of traffic, in any respect whatsoever, or to subject

any particular person, company, firm, corporation, or *locality*, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property: and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.*"

Charges 1, 2, 3, and 4 allege departures from the "long and short haul" rule of the fourth section of the act, and charges 5 and 6 another form of unjust discrimination or undue preference under section 3.

The Commission, after due notice of the charges against them had been served on the defendant carriers, and on testimony taken and argument had in behalf of both parties, investigated the matters involved, as required in section 13 of the law, and made a "report in writing in respect thereto" under section 14. This report is set forth on pages from 51 to 66 of the record, both inclusive, and *presents in detail and at length the facts and grounds upon which the Commission based its order.* (A careful study of this report is due to the Commission, and will be of great service in reaching a thorough and correct understanding of this case.)

The Commission, as the result of its investigation, sustained the six charges above stated, and accordingly made

the order involved in this case. This order is as follows (Record, p. 69):

"It is ordered that the roads participating in the traffic involved cease and desist (1) from charging and collecting on class goods shipped from Louisville, St. Louis, and Cincinnati to Troy a higher rate than is now charged and collected on such shipments to Columbus and Eufaula; (2) from charging and collecting on cotton shipped from Troy via Montgomery to New Orleans a higher rate than 50 cents per hundred pounds (being the rate from Columbus); (3) from charging and collecting on shipments of cotton from Troy for export *via* the Atlantic seaports, Brunswick, Savannah, Charleston, West Point, and Norfolk, a higher rate to those ports than is charged and collected on such shipments from Montgomery; (4) from charging and collecting on cotton shipped from Troy to Brunswick, Savannah, and Charleston a higher rate than is charged and collected on such shipments from Montgomery through Troy to those ports; (5) from charging and collecting on class goods shipped from New York, Baltimore, and the northeast to Troy a higher rate than is charged and collected on such shipments to Montgomery, and (6) from charging and collecting on phosphate rock shipped from the South Carolina and Florida fields to Troy a higher rate than is charged and collected on such shipments through Troy to Montgomery."

The defendant carriers refused or neglected to obey this order, and thereupon the Commission, in pursuance of section 16 of the act to regulate commerce, instituted this cause or proceeding for its enforcement in the circuit court of the United States for the middle district of Alabama. That court denied and dismissed the petition of the Commission, and its action was affirmed by the United States circuit court of appeals for the Fifth circuit. From the latter court the case is brought on appeal to this court.

The specifications of error are twenty-five in number and are set forth on pages from 409 to 411 of the record. The first nine assign as error the affirmance of the decree of the court below, the failure to reverse the decree below, the failure to decree the enforcement of the order of the Commission as an

entirety, and, also, separately, the failure to decree the enforcement of each of the six subdivisions of the order. The remaining specifications are as follows:

"10. Said court erred in ignoring, in effect, the fact that *Troy is shown by the evidence in said cause to be a competitive point as well as Montgomery and Columbus.*

"11. Said court erred in holding in effect that, while the existence of long through competing lines of transportation to Montgomery would naturally operate to lower rates to that city, the existence of such lines to Troy should not have the same effect on rates to that city.

"12. Said court erred in holding that competition between lines of transportation to Montgomery is a circumstance which under section 3 of the act to regulate commerce will justify the giving to that city a preference or advantage in rates over Troy.

"13. Said court erred in holding that such competition constitutes a dissimilar circumstance or condition under section 4 of the act to regulate commerce.

"14. Said court erred in holding in effect that competition of carrier with carrier, both subject to the act to regulate commerce, will justify a departure from the rule of the fourth section of said act *without authority from the Interstate Commerce Commission under the proviso to that section.*

"15. Said court erred in not holding that if competition could in any event relieve a carrier from the rule of the fourth section of the act to regulate commerce or justify discrimination in any form, such competition must be actual—not merely possible or probable—and of controlling force, and in respect to traffic important in amount.

"16. Said court erred in not holding, as appellant contended, that *competition which will be brought into action only by unreasonable or excessive rates is not such competition as will relieve a carrier from the rule of the fourth section of the act to regulate commerce or justify discrimination in any form, and that to allow the natural outcome or result of excessive rates to be made the ground for a license to discriminate is to permit the carrier to take advantage of his own wrong.*

"17. Said court erred in holding that the competition proven in said cause justifies the discrimination to the extent shown to exist under the rates complained of.

"18. Said court erred in not holding that the rates prescribed by the Interstate Commerce Commission in its order *make due allowance for any dissimilarity of circumstance or condition shown to exist affecting transportation to Montgomery and Troy, respectively.*

"19. Said court erred in holding in effect that because the proportion of the through rates from St. Louis, Louisville, and Cincinnati to Troy charged for the haul from Montgomery to Troy *is reasonable as a local rate on a strictly local shipment originating at Montgomery and terminating at Troy it is also reasonable as a proportion of said through rates.*

"20. Said court erred in finding as a matter of fact that 'the Alabama River, open all the year round, is capable, if need be, of bearing to Mobile on the sea the burden of all the goods of every class that pass to and from Montgomery.'

"21. Said court erred in finding as matter of fact, in the absence of any proof to that effect, that 'the competition of the railway lines' (to Montgomery) 'is not stifled, but is fully recognized, intelligently and honestly controlled and regulated by the traffic association' (meaning the Southern Railway and Steamship Association) 'in its schedule of rates.'

"22. In its opinion in said cause said court states as a material matter that *'there is no suggestion in the evidence that the traffic managers who represent the carriers that are members of that association' (Southern Railway and Steamship Association) 'are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them or is likely to lead them to unjustly discriminate against Troy.'*

"The court erred in thus holding in effect that proof of that character is necessary in order to make out a case of unjust discrimination under the law and that it is a proper inference from the failure to make such proof that the rates in question are not unjustly discriminating as against Troy.

"23. Said court erred in holding that the rates to Montgomery are regulated and controlled by competition between the transportation lines to that city, when it appears that said rates are established by agreement between the carriers composing said lines as members of the Southern Railway and Steamship Association.

"24. Said court erred in finding as a matter of fact that the rates by the rail lines to Montgomery have been reduced by water competition by the Alabama River line 'to the level of the lowest practical paying water rate.'

"25. Said court erred in holding in effect that if a dissimilarity of circumstance or condition justifying *some discrimination in rates exists, the extent of the discrimination thus authorized is a matter for the determination of the carriers alone*, and that 'carriers are better qualified to adjust such matters than any court or board of public administration,' and 'it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business.'"

II.

MATTERS OF FACT ALLEGED IN THE CHARGES NOT
DISPUTED. EXTENT OF THE DISCRIMINATIONS THUS
ADMITTED.

The facts alleged in or upon which the six charges against the defendant carriers were based are not controverted. If they be disputed, they are sustained by the evidence and by the findings of fact set forth in the report and opinion of the Commission. (Record, pp. 52-66.) The facts so set forth are made by sections 14 and 16 of the act *prima facie* evidence in all judicial proceedings as to each and every fact found.

It is not disputed that, as alleged in the *first* charge and found by the Commission, \$3.22 per ton is exacted on shipments of phosphate rock from the South Carolina and Florida fields to Troy, while only \$2 is charged on such shipments through Troy, 52 miles farther on to Montgomery; nor that, as alleged in the *second* charge and found by the Commission, the rates on cotton shipped to the Atlantic ports, Brunswick, Savannah, and Charleston, are higher from Troy than from Montgomery *via* the Georgia Central and through Troy *via* the Alabama Midland, said rates having been at the time of the filing of the complaint before the Commission 40 cents per 100 pounds from Montgomery and 47 cents per 100 pounds from Troy.

It is not denied, as found by the Commission, that the privilege set forth in the third charge in reference to shipments for export *via* Brunswick, Savannah, Charleston, West Point, and Norfolk is granted to Montgomery and other Southern Railway and Steamship Association points, but is denied to Troy; nor that, as alleged in the sixth charge and found by the Commission, there is exacted on through shipments of

cotton from Troy *via* Montgomery to New Orleans the full local rate to Montgomery as a part of the through rate.

The two principal charges in the complaint, to which the bulk of the testimony relates, are charges 4 and 5.

Charge 4.

As to charge 4—that on shipments of class goods from New York, Baltimore, and the East to Troy and Montgomery, respectively, over the Alabama Midland as the terminal road, higher rates are charged to Troy than on such shipments through Troy, 52 miles farther on, to Montgomery—the finding of the Commission and the undisputed proof are that those rates per 100 pounds are as shown in the tables below:

Sea to Charleston, Savannah, etc., and rail thence.

Class.	From New York—		From Baltimore—	
	To Mont. gomery.	To Troy.	To Mont. gomery.	To Troy.
1.....	114	136	106	129
2.....	98	117	90	111
3.....	86	103	83	98
4.....	73	89	70	84
5.....	60	74	57	70
6.....	49	61	46	58
A.....	36		33	
B.....	48		45	
C.....	40		37	
D.....	39		36	
E.....	58		55	
H.....	68		72	
F (per barrel).....	78		65	

All rail.

Class.	From New York—		From Baltimore—	
	To Mont- gomery.	To Troy.	To Mont- gomery.	To Troy.
1.....	114	144	106	136
2.....	98	123	90	115
3.....	86	108	83	105
4.....	73	93	70	90
5.....	60	77	57	74
6.....	49	63	46	60
A.....	36	.....	33	.....
B.....	48	.....	45	.....
C.....	40	.....	37	.....
D.....	39	.....	36	.....
E.....	58	.....	55	.....
H.....	68	.....	65	.....
F (per barrel).....	78	.....	72	.....

In order that the court may be able to appreciate fully the extent of the discrimination under these rates against Troy and in favor of Montgomery, the following table is submitted, showing how much greater per ton and per *minimum* carload of 20,000 pounds the charges will be under these rates on shipments from New York to Troy than on such shipments through Troy, 52 miles farther on, to Montgomery:

Excess of rate charges to Troy over those to Montgomery on shipments from New York.

Class.	Sea and rail.		All rail.	
	Per ton.	Per carload of 20,000 pounds.	Per ton.	Per carload of 20,000 pounds.
1.....	\$4.40	\$44.00	\$6.00	\$60.00
2.....	3.80	38.00	5.00	50.00
3.....	3.40	34.00	4.40	44.00
4.....	3.20	32.00	4.00	40.00
5.....	2.80	28.00	3.40	34.00
6.....	2.40	24.00	2.80	28.00

The excess on shipments from Baltimore is the same as the above under the all-rail rates and varies but little from the above under the sea-and-rail rates.

The "sea-and-rail" rates are by the steamship lines from Baltimore and New York to Charleston and Savannah and other South Atlantic ports and thence by rail to Troy and Montgomery, and the "all-rail" rates are by the all-rail lines. It will be noticed that while both these sets of rates—that is, the "sea-and-rail" and the "all-rail"—are the same to Montgomery, the "all-rail" rates to Troy are materially higher than the "sea-and-rail" rates to Troy.

Charge 5.

This charge involves the through rates on class goods from Louisville and other Ohio River points to Troy on the one hand and Montgomery and Columbus on the other, the complaint being that the rates to Troy are unjustly discriminatory against Troy in comparison with those to the latter cities. The rates per 100 pounds from Louisville and Cincinnati to the three cities are (Record, p. 61):

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F*
From Louisville, Ky., to—													
Troy, Ala.	140	130	113	95	75½	62	45	50	37	32	69	59	66
Montgomery, Ala.	98	92	78	63	52	41	28	31	24	20	48	33	40
Columbus, Ga.	107	92	81	68	56	46	28	36	29	25	50	55	50
From Cincinnati, Ohio, to—													
Troy, Ala.	150	140	123	103	82½	68	49	52	39	34	73	63	70
Montgomery, Ala.	108	102	88	71	59	47	32	33	26	22	52	37	44
Columbus, Ga.	117	102	91	76	63	52	32	38	31	27	54	59	54
From St. Louis, Mo., to—													
Troy, Ala.	168	153	133	109	87½	72	52	58	44	37	77	69	80
Montgomery, Ala.	126	115	98	77	64	51	35	39	31	25	56	43	54
Columbus, Ga.	135	115	101	82	68	56	35	44	36	30	58	65	64

* Per barrel.

The distance from Louisville to Montgomery over the Louisville and Nashville road is 490 miles, and from Montgomery to Troy over the Alabama Midland, 52 miles.

The following table shows the mileage rate on the different classes, in *mills*, per 100 pounds yielded by the through rate from Louisville to Montgomery and by the additional charge

on through shipments from Louisville to Troy for the haul from Montgomery to Troy (Record, p. 62):

Mills per 100 pounds.

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Louisville to Mont-													
gomery.....	2	1.8	1.6	1.3	1.06	0.83	0.57	0.63	0.49	0.40	0.98	0.67	0.40
Montgomery to Troy	8	7.1	6.7	5.9	3.8	4	2.6	3.6	2.5	2.3	4	5	2.5

A comparison of the above mileage rates from Louisville to Montgomery and from Montgomery to Troy, which rates from Louisville are taken as illustrative, shows that the proportion of the rate from Montgomery to Troy on *through* hauls from Louisville is *from four to seven times as large per mile as that from Louisville to Montgomery.*

Some idea may be had of the injury resulting to Troy merchants on account of this discrimination from the following table, showing the aggregate rates at which class goods can be shipped from Louisville to Montgomery and Troy, respectively, and then reshipped from Troy and from Montgomery through Troy to points named beyond Troy (Record, p. 62):

From Louisville, Ky.

[In cents per 100 pounds, except Class F, which is per barrel.]

Classes.....	1	2	3	4	5	6	A	B	C	D	E	F
To Brundidge, Ala.:												
Reshipped from Montgom-												
ery, Ala.....	146	136	117	98	81	65	52	52	38	33	72	68
Reshipped from Troy, Ala.	168	154	135	115	93½	76	59	62	46	40	83	84
To Ozark, Ala.:												
Reshipped from Montgom-												
ery, Ala.....	156	144	122	103	84	67	54	54	40	35	74	72
Reshipped from Troy, Ala.	176	161½	143	122	95½	80	59½	66	49	43	87	90
To Dothan, Ala.:												
Reshipped from Montgom-												
ery, Ala.....	162	147	125	106	88	71	57	57	40	35	78	72
Reshipped from Troy, Ala.	188	174	152	130	104½	86	69	71	51	45	93	94

Brundidge, Ozark, and Dothan are towns and stations on the Alabama Midland Railway, all east of Troy, and shipments to them over that road from Montgomery pass through Troy. Brundidge is 17 miles from Troy and 69 from Montgomery; Ozark, 40 miles from Troy and 92 from Montgomery; and Dothan, 68 miles from Troy and 120 from Montgomery.

The rates from Louisville to Columbus and Troy, respectively, plus the rates on reshipments from those cities to Brantley, in cents per 100 pounds, except Class F, which is per barrel, are as follows (Record, p. 62):

Classes.	From Louisville—	
	To Brantley, Ala., reshipped from Columbus.	To Brantley, Ala., reshipped from Troy.
1.....	1.73	1.76
2.....	1.53	1.64
3.....	1.32	1.43
4.....	1.10	1.19
5.....	.90	.95½
6.....	.73	.78
A.....	.52	.46
B.....	.63	.66
C.....	.50	.50
D.....	.44	.44
E.....	.84	.89
F (per barrel).....	.92	.92

Brantley is on the Georgia Central road, 26 miles south of Troy and 111 miles from Columbus, and goods shipped from Columbus to Brantley over that road pass through Troy.

The result of the relatively high rates to Troy from Ohio River points, Louisville being taken as an illustration, is that *Montgomery can reship goods received from Louisville through Troy and 68 miles beyond to Dothan at an aggregate rate of 26 cents per 100 pounds and \$5.20 per ton less than the aggregate rate from Troy on such reshipments and the Troy merchant, being*

unable to compete at such a disadvantage, is driven out of the business in towns surrounding Troy. (See answers to sixth direct interrogatory of E. H. Bashinsky, Record, p. 236; L. M. Bashinsky, Record, p. 241; B. M. Talbot, Record, p. 224; Charles Henderson, Record, p. 228.)

III.

PLEA OF COMPETITION BY THE CARRIERS IN JUSTIFICATION OF THEIR ADMITTED DISCRIMINATIONS AGAINST TROY IN FAVOR OF HER COMPETITORS IN BUSINESS (MONTGOMERY AND COLUMBUS). PROPOSITIONS CONTENDED FOR IN BEHALF OF COMMISSION.

The contention of the carriers is that, conceding the facts upon which the charges made by the Board of Trade of Troy are predicated, they do not constitute any of the offenses denounced in the act to regulate commerce, because of an alleged material dissimilarity in the circumstances and conditions attending the transportation of traffic to Troy on the one hand, and Montgomery and Columbus on the other.

They do not set up any dissimilarity in the circumstances and conditions relating to the *nature and character of the service* of transportation to Troy, on the one hand, and Montgomery and Columbus, on the other, but plead in justification of their admitted discriminations against Troy such dissimilarity as existing because of competition encountered in transporting traffic to the latter cities, which, it is claimed, is not met *to the same extent* in such transportation to Troy. In a supplemental brief (p. 6), filed in the circuit court of appeals, counsel for the roads says "the defendants do not pretend to offer the slightest justification" for the discriminations against Troy, "except the solitary fact of competition at the longer-distance point," Montgomery.

As respects the plea of competition, it is contended on the part of the Interstate Commerce Commission:

"*First.* That, so far as the alleged violations of the 'long and short haul rule' of the fourth section of the act are concerned, carriers can not justify departures from that rule on the ground of competition in transportation to the longer-distance point, unless such departures are authorized by the Commission under the proviso to that section.

"*Second.* That, if competition in transportation can under any circumstances justify departures from the rule of relative equality in rates as between different *localities* laid down in the third and fourth sections of the law, the competition, if any, shown in this case can not be invoked for that purpose.

"*Third.* If the competition alleged in this case can justify any discrimination whatever against Troy in favor of her competitors in business (Montgomery and Columbus), it does not justify discrimination *to the extent* shown.

"*Fourth.* That the order of the Commission in question in this case makes allowance for whatever dissimilarity of circumstance or condition as between Montgomery and Columbus on the one hand and Troy on the other may have been proven."

IV.

PROVISO TO SECTION 4 OF THE LAW—CARRIERS CAN NOT JUSTIFY DEPARTURES FROM THE "LONG AND SHORT HAUL" RULE OF THE FOURTH SECTION OF THE INTERSTATE COMMERCE LAW ON THE GROUND OF COMPETITION IN TRANSPORTATION TO THE LONGER-DISTANCE POINT UNLESS SUCH DEPARTURES ARE AUTHORIZED BY THE COMMISSION UNDER THE PROVISO TO THAT SECTION.

The rule of the fourth section of the act is that—

"It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the *transportation* of passengers or of like kind of property *under substantially similar circumstances and conditions* for a shorter than a longer distance over the same line," etc.

The proviso to this rule is—

“Provided, however, that upon application to the Commission appointed under the provisions of this act, such common carrier may, *in special cases*, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of the act.”

The proviso as well as the rule must be given a field of operation, and the question is, *first*, What are the “*similar circumstances and conditions*” referred to in the body of the rule and under which the greater charge for the shorter than the longer haul is forbidden? and, *second*, What are the “*special cases*” referred to in the proviso in which the Commission may, on application of the carrier, authorize a departure from the rule?

The rule forbids the greater charge for the shorter haul only when the “circumstances and conditions” mentioned in the body of the rule are substantially *similar*. If those “circumstances and conditions” are substantially *dissimilar*, the rule does not apply and there can be no necessity for application to the Commission under the proviso for exemption from the operation of the rule. The proviso can come into operation only where the rule applies—in other words, where the circumstances and conditions referred to in the rule are “substantially similar.” If those circumstances and conditions are “substantially similar,” and the carrier desires exemption from the rule, it must be on other grounds than those covered by the words “substantially similar circumstances and conditions,” and the proviso in the use of the words “special cases” relates to those other grounds.

Light is shed upon the meaning of the words “similar circumstances and conditions,” by the fact that they qualify or limit the word “*transportation*.”

It is the greater charge for the "transportation"—that is, service or act of carriage—under substantially similar circumstances and conditions which is forbidden. The rule expressly relates to *transportation under substantially similar circumstances and conditions*. The circumstances and conditions would, therefore, appear to be *ex vi termini* those directly affecting or which inhere in the transportation or carriage of the goods and not extraneous conditions which may affect the business of carriage.

Congress, doubtless, considered that the circumstances and conditions which bear directly upon the service of transportation were peculiarly within the knowledge of the carrier, and therefore that the carrier might in fixing its rates make proper allowance for any substantial dissimilarity in such circumstances and conditions without coming within the purview of the rule and without prior authority from the Interstate Commerce Commission under the proviso to the rule.

The circumstances and conditions bearing directly on the carriage may relate to, among other things, *rate of speed; risk*—as whether the goods are transported at shippers' risk or at carriers' risk as expressed in the bill of lading; *quantity shipped*—as whether shipped in carloads or less than carloads; *form or condition* in which shipped, as in case of furniture, whether shipped "set up" or "knocked down," or, in case of grain, whether shipped in small lots in sacks or loose in carloads, and so on through the great variety of articles of commerce which are transported in different quantities and forms.

The "circumstances and conditions" bearing directly on the service of carriage being substantially similar, the rule applies and forbids the greater charge for the shorter than the longer haul. If the carrier desires exemption from the rule, the proviso authorizes an application to the Commission which may

in "special cases" after investigation grant such exemption and prescribe its extent.

What are those "special cases"? Competition affects the business of public carriage as distinguished from the actual service; and it may be that competition, and, possibly, other matters, not directly connected with the service of transportation, constitute those "special cases." *That is, however, a matter confided by the proviso, in the first instance, exclusively to the discretion of the Commission.*

In *Osborne v. Chic. & N. W. Ry. Co.* (48 Fed. Rep., 49), when that case was before the circuit court, it was held:

"Under the interstate commerce law the power of determining whether a railroad company is relieved from the operation of the long and short haul clauses lies solely with the Interstate Commerce Commission.

* * * * *

"The consideration of questions of that kind, of the right of the railway company to be excused from the duty and obligation that is placed upon it by the fourth section of the interstate-commerce law, is, by the express terms of the law itself, conferred upon the Interstate Commerce Commission. As you know, there is a body of commissioners provided for by this interstate-commerce act, and the fourth section of that act, by its express terms, in a proviso that is therein contained, places upon the Commission the duty and gives them the authority to investigate and determine whether there are such facts and circumstances surrounding a railroad at a given time as would justify the Commission in authorizing the railway company to charge a greater sum for a shorter than for a longer haul over the same line, in the same direction, *under otherwise substantially similar circumstances.* * * * Questions of that kind are for the judgment and determination of the board of commissioners appointed under this act, and the courts and juries, when they are called to act upon particular cases arising under this act, where it is claimed that the law has been violated, are only authorized to determine the question whether, *in the service rendered, the character of the property, its conveyance, and other facts which inhere in the carrying of the freight upon the particular line which is charged with the wrongdoing,* there existed dissimilar circumstances and conditions, relieving the company from the charge of collecting the larger rate for the shorter haul over the same line, in the same

direction, and under otherwise substantially similar circumstances and conditions. Now, then, if the railway company had been authorized to do that, then they would plead and prove that fact, and it would then be the duty of the court to instruct the jury that that would justify the railway company in making the larger rate for the shorter distance; but no such action has been taken by the Interstate Commission. They have not been called upon to act, and they have not authorized the railway company to charge a greater sum for the shorter than for the longer distance."

This case was taken to the circuit court of appeals, and Justice Brewer held, as was manifestly true, that the long and short haul rule of the statute was not involved, because there was no greater charge in the aggregate for the shorter than the longer haul. (52 Fed. Rep., 912.) Of course *a proviso to a rule can have no application where the rule itself does not apply*. Justice Brewer therefore makes no reference whatever to the position in reference to the proviso taken by the circuit court in the above quotation from the opinion of that court, which position, we submit, can not be successfully controverted in a case where the rule itself is involved.

Counsel for the Louisville and Nashville Railroad Company, in order to find some field of operation for the proviso, stated in his argument before the circuit court of appeals that it applied to a case where it was desired to build up a manufacturing or other enterprise at a particular point, and rates discriminating in favor of such point were necessary for that purpose. In such a case, he said, the carrier might apply to the Commission under the proviso for permission to make the discrimination.

The law, in the language of the Supreme Court in *Union Pacific Co v. Goodrich* (149 U. S., 680), was "designed to cut up by the roots the entire system of rebates and discriminations in favor of particular localities, *special enterprises*, or favored corporations," * * * and *the Commission is powerless to grant a license to violate the law*.

That a carrier can not discriminate for the purpose of building up local industries along its line is held in the following English cases: *Denaby Main Coal Company Case* (11 Appeal Cases, 97); *Ransome v. Eastern Counties Railway Company* (1 C. B. N. S., 437); *Orlade v. N. E. Railway Company*, (*id.*, 454).

The building up of "special enterprises, particular localities, and favored corporations" does not fall within the legitimate sphere of action of public carriers. The abuses which the act to regulate commerce was intended to remedy arose from the assumption of this right on the part of carriers. The administration of the business of public carriage should be *just* rather than *paternal*. Under rates relatively equal to all points, enterprises and commercial centers will be built up where they *naturally* belong, and the carrier will be more prosperous than under the present system of discrimination prevailing in the South.

This system of discrimination known as the "trade center or basing point system," under which the rates in question in this case are established, and which prevails exclusively in the South, is discussed at length in Part XI. *infra*, of this argument.

V.

IF COMPETITION BETWEEN CARRIERS CAN UNDER ANY CIRCUMSTANCES JUSTIFY DISCRIMINATION THE COMPETITION, IF ANY, SHOWN IN THE PRESENT CASE DOES NOT.

(a) *The rates to Montgomery fixed by agreement and not by competition.*—As preliminary to the main question discussed in this subdivision of my argument, attention is called to the fact that the rates in question, both from the East and the West, to Montgomery and other localities in the South recognized as competitive points, were fixed by agreement between the carriers as members of the Southern Railway

and Steamship Association. The so-called "jurisdiction" of this association as to the regulation of rates covers the territory east of the Mississippi and south of the Ohio and Potomac rivers. This fact relates to such a large area of the country and is of such general notoriety that the court is authorized to take judicial notice of it. It is disclosed incidentally in the testimony of W. F. Vandever, in answer to the seventh direct interrogatory propounded to him (Record, p. 289), when he says that "in 1886 the merchants of Montgomery, on account of the high rate in force at Montgomery as compared with Mobile, appealed to the Southern Railway and Steamship Association for a reduction in rates from Eastern and Western points." It is also alluded to in charge 3 and the proof before the Commission in support of that charge.

George C. McCormick, a witness for the carriers, testifies that "the railroad lines coming into Eufaula are under one management or system, and *therefore not competing*." (Answer to tenth direct interrogatory, Record, p. 340.) This is equally true as to the lines coming into Montgomery; they are under one management or system so far as relates to fixing of rates. These rates are the result of agreement, and not of competition. Indeed, *the main object of an agreement between rival lines as to the rates to be charged by them is the prevention of competition*. The frequently ruinous nature of the competition, resulting in what are termed "rate wars," brings about the agreement, but the rates agreed upon are not in any proper sense the result of competition. They are, on the contrary, the result of an *agreement to desist from competition*, and are such as the roads choose to make them, competition being eliminated from the situation, and, this being the case, it is scarcely necessary to add they will be sufficiently remunerative and not unreasonably low from a railroad standpoint.

(b) *Routes from Cincinnati, Louisville, St. Louis, and the*

West which it is claimed compete with and control the rates over the direct rail routes to Montgomery.—The competition in transportation to Montgomery from Cincinnati, Louisville, St. Louis, and the West, relied upon by the roads and to which their testimony relates, is by one or the other of the following two routes:

1. *By the all-water route*, down the Ohio and Mississippi rivers to New Orleans, across the Gulf of Mexico to Mobile, and up the river to Montgomery. The distance from Cincinnati, Louisville, and St. Louis by this route to Montgomery is about 2,000 miles. Traffic transported by this route has to be transferred from the river boat to a Gulf boat at New Orleans, from the Gulf boat to a river boat at Mobile, and the trip will consume two weeks. It takes from three and a half to four days for a boat to go from Mobile up the river to Montgomery.

2. *By rail to Mobile and water up the river to Montgomery.* The distance by rail to Mobile from St. Louis over the short line, the Mobile and Ohio road, is 614 miles, and to Montgomery over the Louisville and Nashville road, the short line, it is 625 miles; from Cincinnati to Mobile, the distance by the short line, the Louisville and Nashville road, is 780 miles, and to Montgomery, 600 miles; and from Louisville to Mobile over the Louisville and Nashville road, the short line, the distance is 670 miles, and to Montgomery, 490 miles. The distance, therefore, by rail from St. Louis to Montgomery is 19 miles less than to Mobile, and from Cincinnati and Louisville to Montgomery the distances by rail are 180 miles less than to Mobile.

Traffic from Louisville, Cincinnati, and St. Louis, in order to reach Montgomery by way of rail to Mobile and thence up the river to Montgomery, must, after having in the first instance been hauled by rail a greater distance to Mobile than it has to

be hauled by rail to Montgomery, be transferred at Mobile from the cars to a boat and then carried 400 miles up the river, consuming three and a half days for the river trip. The water haul under such circumstances would not be an advantage, but would involve additional delay and expense.

(c) *Route of alleged competition in transportation to Montgomery from the East.*—The competition in transportation to Montgomery from Baltimore, New York, and other northeastern cities, relied upon by the roads, and to which their testimony relates, is by the water route over the Atlantic, around Florida Keys, across the Gulf to Mobile, and thence up the Alabama. This route is about 2,000 miles in length, and transportation over it involves transfer at Mobile and nearly two weeks' consumption of time.

(d) *Routes of alleged competition in transportation to Columbus and Eufaula from the West and East.*—These routes are from the West *via* the Ohio and Mississippi rivers to the Gulf, across the Gulf to Apalachicola, Fla., or from the East, over the Atlantic, around Florida Keys, across the Gulf to Apalachicola, and thence, in both cases, up the Chattahoochee River to Eufaula and Columbus. These routes are thousands of miles in length, involve transfers and great consumption of time. At Apalachicola traffic would have to be transferred from the ocean steamer or vessel to a lighter and from the lighter to the river steamer, because sea-going vessels can not enter the harbor at that city. (Answer to seventh cross-interrogatory, Record, p. 320.)

As to competition in transportation to Columbus and Eufaula over these routes *via* Apalachicola and the Chattahoochee River, the testimony shows that none of controlling force has existed since the direct rail lines came into operation. J. E. Grady, for forty years a resident of Apalachicola, and for many years collector of customs at that port, testifies that

there have been no through shipments from the East or West to Columbus and Eufaula *via* Apalachicola and the Chattahoochee River "for fifteen years to his knowledge." (Answer to fourth direct interrogatory, Record, p. 395.) See also on this point testimony of John O. Martin (answers to second and fourth cross-interrogatories, Record, p. 314) and W. R. Moore (answers to sixth and seventh direct interrogatories, Record, p. 318, and to sixth cross-interrogatory, Record, p. 320).

(c) *Under normal conditions competition by these indirect routes can not control or materially influence rates over the direct rail lines.*—The general, if not invariable, rule is, that the short line between two terminal points fixes the rate for all lines between those points. Time is an element of the first importance in commercial transactions. It would be anomalous, if these long, circuitous water (or rail and water) routes, to which transfers, great consumption of time, and other disadvantages are incident, could by their competition control or materially influence the rates on the shorter, more direct, and expeditious rail lines, over which through traffic is transported in carloads without transfer or breakage of bulk from points of origin to destinations. The thought will suggest itself that if competition by these long, indirect lines with the direct lines can ever become of controlling force, *it must result from some exceptional or abnormal condition.* On examining the testimony we find this to be the case. The evidence shows that competition by the water or water and rail routes has only been brought into action by excessive or unreasonable rates on the direct rail lines, and when the rates of the latter have been made even approximately reasonable, it has disappeared. In support of this, attention need only be called to the testimony of witnesses for the roads. Three of the leading grocery merchants of Montgomery, W. F. Vandever, J. Greil, and Henry M. Hobbie, and M. B. Houghton, a banker

and president of the Commercial and Industrial Association of Montgomery, were examined as witnesses by the roads.

Mr. Vandever testifies:

"In 1886 the merchants of Montgomery, on account of the high rate in force at Montgomery as compared with Mobile, appealed to the Southern Railway and Steamship Association for a reduction in rate from Eastern and Western points. That appeal was unheeded, and the merchants, feeling that they were compelled to have relief in order to maintain their business, organized a stock company in Montgomery, with a capital of \$35,000, and bought the steamers *Alabama* and *Jewel*, having each a tonnage of 400 tons, and ran them on the Alabama River for two years, until they succeeded in securing an adjustment of rates more satisfactory to them, but still not such rates as placed them on an equality with Mobile." (Answer to seventh direct interrogatory, Record, p. 289.)

Mr. Greil testifies:

"I have" (past tense) "received shipments at Montgomery by river which came *via* Mobile from points west of Mobile. Several years ago, when there was such a great difference in the rates of freight between Montgomery and Mobile, the merchants of Montgomery went to work and put two steamers on the Alabama River, the *Jewel* and the *Alabama*, which were run by said merchants, who were the principal stockholders, between Montgomery and Mobile." (Answer to third direct interrogatory, Record, p. 281.)

"I have" (past tense) "received at Montgomery shipments by river which came *via* Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. These shipments were received at various times, but were not so very large. They were received during the same period referred to in my answer to the third interrogatory, when that line of boats was established by the merchants." (Answer to fourth direct interrogatory, Record, p. 282.) "During the time referred to by me in my answers to the direct interrogatory, when the line of steamboats was established on the Alabama River by the merchants of Montgomery, the largest proportion of shipments to me from points west of Mobile came to me by river at Montgomery *via* Mobile, but I can not state more definitely what proportion so came. Since rail rates have been readjusted satisfactorily to the merchants, most of our goods come by rail." (Answer to fifth cross-interrogatory, Record, p. 283.) "I know that in the event it should become necessary, on account of the

high rail rates, that all the boats necessary to do the bulk of the business done at Montgomery could be procured for the river service." (End of answer to twelfth cross-interrogatory, Record, p. 285.)

Mr. Houghton testifies:

"In the event rail rates were again advanced, or any *unfair discrimination was made against Montgomery*, it is practicable to obtain all the steamboats necessary to do all the business from eastern and western points to Montgomery." (Answer to twelfth cross-interrogatory, Record, p. 288.)

Mr. Hobbie testifies:

"I *have*" (past tense) "received at Montgomery shipments by river which came *via* Mobile from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. On account of *high rail rates in 1886* my company began shipping goods from New York, Philadelphia, Boston, and other eastern points *via* Mobile, and from there to Montgomery by river. These shipments so received came every few weeks and *continued for two years*, according to the best of my recollection." (Answer to fourth direct interrogatory, Record, p. 297.) "At this time all shipments from Louisville, Cincinnati, St. Louis, and New Orleans came to me at Montgomery by rail routes. We are now making no shipments by river *via* Mobile." (Answer to fifth cross-interrogatory, Record, p. 299.) "All of my shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities come to me at this time to Montgomery by other routes than by river *via* Mobile. Said shipments usually come *via* Savannah or Norfolk." (Answer to sixth cross-interrogatory, Record, p. 299.) "The fact that the Alabama River is navigable for steamboats between Montgomery and Mobile has the effect of *restraining railroads from exacting undue rates from us*." (Answer to seventh direct interrogatory, Record, p. 297.)

All the witnesses, it will be observed, refer to the same period—the two years following the establishment of the river line in 1886—as the time when they received through shipments by the Alabama River from the East and the West. *No competition of controlling force by the river route as to such shipments is shown except during that period.* That, the witnesses say, was brought into action by high or excessive rail

rates, and ceased when the rates were made more reasonable. The river, in the language of the witness Hobbie, has the "*effect of restraining railroads from exacting undue rates from us.*"

The testimony as to competition in transportation to Eufaula and Columbus *via* the Chattahoochee River is also to the effect that it can be brought into active operation only by *excessive rail rates*.

George H. Dent, a witness for the roads, testifies:

"The difference between the towns of Eufaula and Troy, with respect to the circumstances and conditions affecting the transportation of traffic to and from those cities, respectively, is that Eufaula is situated upon a navigable stream, through which shippers can seek relief whenever railroad rates become *onerous or burdensome*, while Troy is an inland town and has no waterway." (Answer to tenth direct interrogatory, Record, p. 344.)

A. Berringer, a witness for the roads, testifies:

"The fact that the Chattahoochee River is navigable by steamboats has the effect of preventing the railroads *from overcharging in their rates.*" (Answer to the sixth direct interrogatory, Record, p. 325.) "The principal difference between Troy and Eufaula is, that at Eufaula we have the river to fall back upon *when the railroad rates are unreasonable*, while Troy is an inland town, and without access to water transportation." (Answer to ninth direct interrogatory, Record, p. 326.)

Mr. J. G. Gince, a witness for the roads, testifies:

"The fact that the Chattahoochee River is navigable has the effect of keeping down the rates charged by railroads. In other words, it *has the effect of maintaining reasonable rates by rail.*" (Answer to eighth direct interrogatory, Record, pp. 334-335.) "If such a rate" (rail rate) "proved to be *excessive*, it is my opinion that boat lines would be established on the water routes." (Answer to eleventh direct interrogatory, Record, p. 335.)

The point which is sought to be emphasized is, that, taking all the testimony bearing upon the subject together, it only amounts to this, that abnormal rates, or, in other words,

excessive rates, by the direct rail lines will bring into action competition of controlling force by the indirect water or rail and water routes. We submit that if water competition can in any case make out the substantially dissimilar circumstances and conditions justifying discrimination within the meaning of the law, it must be such competition when brought into operation by reasonable rail rates or which will exist under normal conditions. To hold that the fact that excessive or unreasonable rates will divert traffic from rail to water lines constitutes such dissimilar circumstances and conditions will be to completely nullify or emasculate the remedial provisions of the statute. *Proof of that fact may be made in any case.* For example, proof can be made that a certain increase of rail rates between Montgomery and Troy will divert the traffic to the wagon or ox-cart lines which, it is said, existed before the railroads were built. Proof, doubtless, can be made that if both the rail and water rates to Montgomery were increased sufficiently, traffic to Montgomery would be diverted to the wagon lines which hauled traffic to Montgomery, as well as to Troy, before railroads came into operation. Excessive or prohibitory rates by one line or mode of transit will necessarily force the traffic to another line or mode of transit. If the flow of commerce is diverted from its natural channel by a dam, it will seek outlet by any other available route.

Courts in construing statutes must take into consideration the normal conditions which the law-making power must have had in mind in their enactment. To do otherwise is to base the *general rule* upon the *exception* or upon an exceptional condition of things.

The question begs, the court, under the evidence in this case, is simply this: Are the roads to be allowed to discriminate against towns away from rivers, because, if unreasonable rates

are made by them to river towns, the natural effect of this wrong, perpetrated by them, will be to divert the traffic to the river line? To allow the natural outcome of an excessive rate to be made the basis of a license to discriminate is to permit the carrier to take *advantage of its own wrong*.

Attention of the court is called to the significant fact that the proof made by the roads to the effect that the Chattahoochee and Alabama rivers are necessary to enable Montgomery, Columbus, and Eufaula to obtain even approximately reasonable rates shows (if it be not an admission by them) the necessity for the regulation of the rates of carriers of interstate commerce by the General Government. In other words, it shows that they will act fairly and justly as between different localities *only under compulsion*, and demonstrates the necessity for such legislation as the "act to regulate commerce." Montgomery, Eufaula, and Columbus, say the witnesses for the roads, have their rivers to "fall back upon" for protection. The question arises, What protection have inland towns like Troy? Manifestly none except the protection of the law as enforced by the courts. The law was made for just such a case as that of Troy. If not, it can have no practical application whatever.

(f) The river does not fully protect Montgomery from discrimination by rail lines in favor of Mobile, and therefore the river competition is not of controlling force.

The witness Vandevier, in his testimony quoted *supra*, states that the boat line was put upon the Alabama River by the Montgomery merchants "on account of the *high rates in force at Montgomery as compared with Mobile*," and that it resulted "in securing an adjustment of rates more satisfactory to them (the Montgomery merchants), but *still not such rates as placed them on an equality with Mobile*."

This is an admission that the river does not give Montgomery

full protection from discrimination in favor of Mobile, and it appears clearly from the following table giving the rates on class goods from Louisville, Cincinnati, and St. Louis, to Montgomery and Mobile. (Record, p. 64.)

Rates in cents per 100 pounds.

Distances.	Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
644 miles via M. & O.	From St. Louis to	90	75	65	50	40	35	25	25	25	20	28	25	45
805 miles via L. & N.	Mobile.													
625 miles via L. & N.	From St. Louis to	126	115	98	77	64	51	35	30	31	25	56	43	54
	Montgomery.													
669 miles via L. & N.	From Louisville to	90	75	65	50	40	35	25	25	25	20	28	25	45
	Mobile.													
490 miles via L. & N.	From Louisville to	98	92	78	63	52	41	28	31	24	20	48	33	40
	Montgomery.													
779 miles via L. & N.	From Cincinnati to	98	83	73	54	44	30	28	27	27	22	31	28	49
	Mobile.													
609 miles via L. & N.	From Cincinnati to	108	102	88	71	59	47	32	33	26	22	52	37	44
	Montgomery.													

From this table it will be seen that the rates from St. Louis to Mobile are much lower than to Montgomery, although the haul from St. Louis to Mobile by the short line over the Mobile and Ohio road is 19 miles longer than the haul to Montgomery over the short line, the Louisville and Nashville road, and the latter road hauls traffic from St. Louis through Montgomery, 180 miles farther on, to Mobile at these much lower rates. The rates from Louisville and Cincinnati over the Louisville and Nashville road, the short line in both instances, are also materially lower to Mobile than to Montgomery, although the hauls are *through Montgomery and 180 miles farther on to Mobile.*

The Alabama River does not intervene between Cincinnati, Louisville, and St. Louis, and Montgomery, and is not on, *but beyond*, the direct line of transit, between the former and the latter. It is, however, on the direct line of transit from the former cities to Mobile, and, therefore, its influence on rates, if any, is in the direction of lower rates to Mobile.

VI.

THE COMPETITION, IF ANY, PROVEN IN THIS CASE DOES NOT JUSTIFY DISCRIMINATIONS AGAINST TROY IN FAVOR OF HER COMPETITORS IN BUSINESS (MONTGOMERY AND COLUMBUS) TO THE EXTENT SHOWN. THE ORDER OF THE COMMISSION MAKES ALLOWANCE FOR ANY POSSIBLE DISSIMILARITY OF CONDITION RESULTING FROM SUCH COMPETITION. THE CIRCUIT COURT OF APPEALS DOES NOT CONSIDER THESE PROPOSITIONS.

(a) The extent of the discrimination against Troy in favor of her competitors in business (Montgomery and Columbus) under the rates in question in this case is shown in Part II of this argument.

For example, as before stated, goods can be shipped from Louisville to Montgomery and then reshipped from Montgomery *through Troy and 68 miles beyond to Dothan* at an aggregate rate of 26 cents per 100 pounds less than the aggregate rate on such a reshipment from Troy; and on shipments from the East *through Troy and 52 miles beyond to Montgomery* the rate (sea and rail) per minimum carload of 20,000 pounds on first-class traffic is \$44 higher to Troy than to Montgomery. Thus *Troy is cut both ways*, and her merchants are driven out of the territory immediately around her.

No dissimilarity of condition, resulting from competition or anything else, has been shown which can justify discrimination to that extent.

(b) The order of the Commission, it will be found on examination, requires a very conservative reduction in the rates to Troy and makes allowance for any possible dissimilarity of circumstance or condition affecting transportation to Montgomery. It is as follows (Record, p. 69):

"It is ordered that the roads participating in the traffic involved cease and desist (1) from charging and collecting on

class goods shipped from Louisville, Cincinnati, and St. Louis to Troy a higher rate than is now charged and collected on such shipments to Columbus and Eufaula; (2) from charging and collecting on cotton shipped from Troy, via Montgomery, to New Orleans a higher through rate than 50 cents per hundred pounds (being the rate from Columbus); (3) from charging and collecting on shipments of cotton from Troy for export via the Atlantic seaports, Brunswick, Savannah, Charleston, West Point, and Norfolk a higher rate to those ports than is charged and collected on such shipments from Montgomery; (4) from charging and collecting on cotton shipped from Troy to Brunswick, Savannah, and Charleston a higher rate than is charged and collected on such shipments from Montgomery through Troy to those ports; (5) from charging and collecting on class goods shipped from New York, Baltimore, and the Northeast to Troy a higher rate than is charged and collected on such shipments to Montgomery, and (6) from charging and collecting on phosphate rock shipped from the South Carolina and Florida fields to Troy a higher rate than is charged and collected on such shipments through Troy to Montgomery."

In the four instances where the haul is through Troy and Troy is the shorter distance point and Montgomery the longer-distance point by 52 miles, Troy is given by this order *not a less rate than Montgomery*, but the same rate. Those instances are: (1) Shipments of class goods from New York, Baltimore, and the Northeast to Troy and through Troy to Montgomery; (2) shipments of phosphate rock from the South Carolina and Florida fields to Troy and through Troy to Montgomery; (3) shipments of cotton from Troy and from Montgomery through Troy to Brunswick, Savannah, and Charleston, and (4) shipments of cotton for *export via* the South Atlantic ports from Troy and from Montgomery through Troy. In each of these cases, although the haul to or from Troy is 52 miles *less* than to or from Montgomery, Troy is charged under the order of the Commission *as much as Montgomery*. On the other hand, where the haul is from the West through Montgomery to Troy or from Troy through Montgomery to New Orleans, in which cases Montgomery is the shorter-distance point by 52 miles, the rule is reversed and the Troy rates are made higher

than the Montgomery rates. The question under this state of facts is whether the Commission went far enough in reducing the rates to Troy. If the order is objectionable at all, it is on this ground.

(c) *The circuit court of appeals does not consider the foregoing two propositions* (propositions 3 and 4, Part III, of this argument).

The circuit court of appeals, at the conclusion of its opinion, states that it does not "discuss" the two propositions, namely, that no dissimilarity of conditions has been shown justifying discrimination to the *extent* proven, and that the order of the Commission makes due allowance for any possible dissimilarity in such conditions.

The following is the language of the court on this point:

"We do not discuss the third and fourth contentions of the counsel for the appellant, further than to say that within the limits of the exercise of intelligent and good faith in the conduct of their business and *subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate* so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. *The carriers are better qualified to adjust such matters than any court or board of public administration, and within the limitations suggested it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business.*"

It is not denied that carriers have the right to fix and regulate their rate charges so as best to promote their business interests, "*subject to the two leading prohibitions that those charges shall not be unjust or unreasonable and that they shall*

not unjustly discriminate." If rates be just and reasonable under section 1 of the act to regulate commerce and not unjustly discriminatory under sections 2, 3, or 4, the Commission has and claims no authority in respect to their regulation.

The theory or leading idea of the two "contentions" or propositions referred to by the court is that, notwithstanding there may be a substantial dissimilarity of conditions, due allowance may be made therefor and the *rates may still be unreasonable or unjustly discriminatory.*

The position of the circuit court of appeals, as indicated in the above extract from its opinion, is that the "adjusting of dissimilar circumstances and conditions to their business"—that is, the determination of the *extent* to which discrimination is justified by such circumstances and conditions—should be left to the "traffic managers" of the carriers. This is in effect the same position as that contended for before the Commission by counsel for the carriers in the case of the *Freight Bureau v. Cinn., N. O. & T. P. R. Co., et al.* (6 I. C. C. R., 238), namely, that "once a substantial dissimilarity of circumstances and conditions appears, *that fact takes the whole situation entirely out of the operation of the*" law. The circuit court of appeals also quotes with approval the same rule as laid down by the circuit court in its opinion in this case as follows:

"The conditions are not the same and the circumstances are dissimilar, *so that the case is not within the statute.*" (Record, 124.)

The Commission in the case *supra* replied to this as follows:

"This position is manifestly untenable. It is in effect a claim that a substantial dissimilarity of circumstances and conditions is, even after due allowance has been made therefor, a license to a carrier to go further and give undue preferences and practice all the other forms of unjust discrimination denounced by the statute. In *Raworth v. Northern Pac. R. Co.*, 3 Inters. Com. Rep., 857, 5 I. C. C. Rep., 234, it is held that the law forbidding unjust discrimination applies even in cases

where a departure from the "long and short haul rule" of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust discrimination; and in the case of *The Manufacturers & J. Union v. Minneapolis & St. L. R. Co.*, 3 Inters. Com. Rep., 115, 4 I. C. C. Rep., 79, the rule is laid down that "relative equality is necessary in the degree of similarity."

This is the correct rule. If carriers are left to determine the amount or extent of the discrimination the circumstances and conditions in a given case justify, then they may practice extortion and unjust discrimination *ad libitum*. If "carriers are better qualified to adjust such matters *than any court or board of public administration*," then they are better qualified to pass upon the reasonableness of a given rate established by them and upon all the other matters confided by the law to the courts and the Commission. This position of the court virtually makes the carrier judge in his own case. *Nemo debet esse iudex in propria causa*.

If carriers were free from the human infirmity of bias in favor of their own interests, and their judgment was otherwise faultless in these matters, then there was no necessity for the act to regulate commerce. Congress, however, did not take that view of it; could see in the history of the business of common carriage no reason why carriers should be exempt from the rule that "no man should be judge in his own case," and enacted the law. This law confided the determination of these matters, in cases of dispute, to impartial tribunals—the courts and the Commission.

In the case of a party sued for a debt, it might be said that the debtor, being personally cognizant of the facts relating to his own indebtedness, was better qualified than any court or jury to determine its amount. The doctrine laid down by both the courts below in the above extracts from their opinions in this case, if applied to all legal controversies, would result in

the abolition of courts. We can only look for this after the advent of the millennium.

In the proviso to section 4 of the law it is expressly enacted that the Commission may "from time to time" prescribe the *extent* of the discrimination justifiable in case a departure from the rule of the law is authorized, as follows:

"The Commission may from time to time *prescribe the extent* to which such designated common carrier may be relieved from the operation of this section of the act."

(c) "*Southern Railway and Steamship Association*" and *traffic managers*.

The circuit court of appeals in its opinion makes the following statement in reference to the "Southern Railway and Steamship Association" and the traffic managers of the roads:

"The competition of railway lines is not stifled, but is fully recognized, *intelligently* and *honestly* controlled and regulated by the Traffic Association in its schedule of rates. There is no suggestion in the evidence that the traffic managers who represent the carriers that are members of that association are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them, or is likely to lead them, to unjustly discriminate against Troy."

There is no evidence which bears directly on the honesty, intelligence, and freedom from bias of the association and the traffic managers, *unless it be the rates themselves which they have established*.

Those rates, as heretofore shown, discriminate against Troy to such an extent as to rebut any presumption which might be indulged in favor of the fairness and intelligence of those by whom they were established and put the burden upon the carriers of proving that they are not unjustly discriminatory.

The only other evidence bearing upon the intelligence and fairness of the Southern Railway and Steamship Association in regulating rates to different points is that of Mr. Vandever, a witness for the roads, who states that in 1886 the rates to

Montgomery *were so high*, as compared with those to Mobile, that the Montgomery merchants appealed to the association for a reduction, and, this appeal being "unheeded," they, being "*compelled to have relief in order to maintain their business*," established a boat line on the Alabama River, and by this means obtained from the association *partial* relief. (Record, 289.) This *partial* measure of relief was granted by the association *under compulsion*. This circumstance indicates a want either of intelligence or fairness in the association in its adjustment of rates between different localities.

In view of this state of the proof, it is difficult to understand upon what the court bases its statement eulogistic of the Southern Railway and Steamship Association in the above quotation from its opinion.

The fact that there is no positive proof of bias on the part of the traffic managers of the roads against Troy and in favor of Montgomery, is not a circumstance which the court should have considered in passing upon the justice or injustice of the admitted discriminations against Troy in favor of Montgomery. *Malice* is not a necessary ingredient of the charges against the roads. *If it were it might be inferred from the extent of the discriminations.*

VII.

THE ORDER OF THE COMMISSION IS PRIMA FACIE LAWFUL—
BURDEN ON THE CARRIER TO SHOW ITS UNLAWFULNESS—
THEY HAVE NOT DONE SO.

The order of the Commission is to be held as *prima facie* lawful. The maxim "*omnia presumuntur rite esse acta donec contraria apparentur*," which is invoked in support of the official acts of public officers, tribunals, and administrative boards, applies with full force to an order of the Interstate Commerce Commission, which is a bureau, tribunal, or administrative

board of the Government established by the law of the land. The Commission has made out a *prima facie* case for the enforcement of its order by establishing the issuance of the order and its violation by the defendants. Neither is controverted, but, on the contrary, is expressly admitted. The burden is therefore upon the defendants to *show clearly* to the satisfaction of the court that the order is unlawful and should not be enforced. To raise a mere doubt will not be sufficient. In the case of *Missouri Pacific Railway Co. v. Texas and Pacific Railway Co.* (31 Fed. Rep., 862), Judge Pardee says:

"Whether in any particular case there is that competition on the long haul that will justify a lower charge for the long haul than is charged for the short haul under otherwise similar circumstances and conditions must be determined on the facts of the particular case, *keeping in mind that, where the matter is not clear, the object and policy of the law should prevail.*"

Conceding for *argument's sake* that some dissimilarity of circumstances and conditions has been shown which would justify rates relatively somewhat lower to Montgomery than to Troy, the question arises what is the extent of that dissimilarity, and whether under this order the Commission has not made sufficient allowance for such dissimilarity. The mere fact of dissimilarity, as shown in Part VI of this argument, does not justify any amount of discrimination the carrier may see proper to indulge in. The discrimination must be in proportion to the dissimilarity. "Relative equality is necessary in the degree of similarity." (4 I. C. C. R., p. 79.) The defendants (upon whom the burden is) have given no data either as to the extent of the dissimilarity or as to the amount of discrimination which it justifies. How, then, can the court hold that the *prima facie* presumption in favor of the lawfulness of the order has been rebutted? It may be safely affirmed that no circumstances or conditions have been proven which authorize discrimination to the extent shown by the facts admitted in this case.

VIII.

THE VICE IN THE THROUGH RATES FROM CINCINNATI, LOUISVILLE, AND ST. LOUIS TO TROY IS THE CHARGE OF THE LOCAL RATE FROM MONTGOMERY TO TROY AS A PART OF THAT THROUGH RATE—A RATE REASONABLE AS A LOCAL RATE ON A STRICTLY LOCAL HAUL, EXCESSIVE AS A PROPORTION OF A THROUGH RATE—LOCAL HAULS MORE EXPENSIVE TO CARRIER THAN THROUGH HAULS—STATE RAILROAD COMMISSIONS ONLY PRESCRIBE RATES ON LOCAL INTRASTATE HAULS—EVIDENCE AS TO REASONABLENESS OF RATE FROM MONTGOMERY TO TROY AS A LOCAL RATE IRRELEVANT—NO EXTRA EXPENSE FOR PORTION OF HAUL FROM MONTGOMERY TO TROY.

(a) *Vice in the through rates from the West to Troy.*—The Commission, seeing the great disparity between the through rates from the West to Troy, on the one hand, and Montgomery and Columbus, on the other, in order to diagnose the case intelligently, dissected the through rates to Troy, and discovered that the disease was located in that part of the through rate which was charged for the portion of the through haul from Montgomery to Troy. On this point the Commission say:

"The through rates to Troy are based on the Montgomery rates, and in making them Montgomery is treated as a 'trade center' or 'basing point,' and Troy as a local. This is conceded on the part of the defendants. The vice in the through rate to Troy, if any, arises from this fact and from the *consequently greatly disproportionate charge for the haul from Montgomery to Troy*, when compared with that from Louisville and the West to Montgomery." (Report of the Commission, p. 13, and Record, p. 63.)

In other words, the "vice in" or illegality of the through rate arose from the charge as a part of it *of the local rate from Montgomery to Troy*. (What is said above and hereinafter as to the charge of a local as part of a through rate on shipments

from the West to Troy is applicable to the charge of the local from Troy to Montgomery as part of the through rate on cotton shipped from Troy to New Orleans, the subject-matter of charge 6.)

A rate reasonable as a local rate for a local haul, unreasonable as a proportion of a through rate.—The Commission held that the cost of local hauls to the carrier being much greater than on long through hauls, and local rates being consequently much higher per mile than through rates, the charge of a local rate as a proportion of a through rate was *prima facie* excessive. I read as part of my argument what the Commission say in this connection:

"Through rates, it is true, are not required to be made on a strictly mileage basis, but mileage is as a general rule an element of importance and due regard to distant proportions should be observed in connection with the other considerations that are material in fixing transportation charges.' The cost of the service in railway transportation is the expense of the two terminals and the intermediate haul. The terminal expenses remain the same without reference to the length of the haul. A local rate covers the expenses of both terminals, but a division of a through rate allotted to either of the terminal carriers of the through line can only embrace the expense of one terminal, and because of this difference in expense, among other reasons, local rates are made, as a general rule, much higher in proportion to the length of haul than through rates or any division thereof. A local rate, which presumably is adopted as covering both the initial and final expenses of the haul, is *prima facie* excessive as a part of a through rate over a through line composed of two or more carriers." (Record, p. 60.)

The roads have introduced evidence sustaining this position of the Commission—in other words, evidence showing that the cost to the roads on local hauls is many times greater per mile than on through hauls. The testimony on this point is given by W. J. Haylow, master of transportation of the Alabama Midland Railway Company. Comparison is made by him of the expense per ton of *local traffic in less than carloads* on certain trains with the expense per ton on *carload through freight*

on certain other trains on that railway. It is the carload through freight the transportation of which is shown to be many times less expensive than the local. (Testimony of W. J. Haylow, Record, pp. 268-269.)

The through freight to Troy is shown by the evidence to be in *carloads*. (B. M. Talbot, third direct interrogatory, Record, p. 223.)

(b.) *Testimony as to reasonableness of proportion of through rate from Montgomery to Troy relates to it as a local rate.*—It is manifest that a rate may be reasonable as a local rate for a *strictly local haul* and unreasonable and excessive as a proportion of a through rate for a through haul. Theodore Welch, at that time general freight agent of the Louisville and Nashville road, a witness for the roads, testified that the proportion of the through rates received by the Alabama Midland and Georgia Central roads from Montgomery to Troy were reasonable, but on cross-examination he stated that he was "basing his opinion upon the rates *considered as local rates*." He says:

"In saying in my answer to the direct interrogatories that the proportion of the through rates received by the Alabama Midland and Georgia Central railroads for transportation from Montgomery to Troy is reasonable, *I am basing my opinion upon the rates considered as local rates*." (Fifth cross-interrogatory, Record, p. 280.)

To the same effect is the testimony of W. P. Shelman, traffic manager of the Georgia Central and Savannah and Western Railroad Companies and a witness for the roads. He says:

"In relation to the proportion of through rates received by the Alabama Midland and Georgia Central railroads between Montgomery and Troy on business from Louisville, Cincinnati, and St. Louis, they are based on the *local rates* of the Alabama Midland, which is the short line between Montgomery and Troy, the long line accepting the same proportions. In speaking of these rates as reasonable in my answer to the direct interrogatories, *I did so with reference to that fact*." (Fifth cross-interrogatory, Record, p. 331.)

(c) *Claim that proportions of through rates from Montgomery to Troy are reasonable because not higher than local rates prescribed by Alabama railroad commissioners.*—The roads have introduced a number of witnesses, who testify that “the proportions of the through rates between Montgomery and Troy are reasonably low, because they are not higher than the rates allowed between Montgomery and Troy by the Alabama railroad commission.” (W. F. Shelman, fifth direct interrogatory, Record, p. 330; Lee McLendon, seventeenth direct interrogatory, Record, p. 352.)

The State railroad commission has no jurisdiction over rates on interstate traffic, and the witnesses for the roads testify that the “railroad commission of Alabama does not undertake to prescribe or regulate through rates on interstate traffic, or the proportion of such through rates charged for that part of such through hauls of such traffic as may be in the State. (Theodore Welch, sixth cross-interrogatory, Record, p. 281; B. Dunham, sixth cross-interrogatory, Record, p. 274; W. F. Shelman, sixth cross-interrogatory, Record, 331.)

The rates prescribed and approved by the State commission are the *local* rates between Montgomery and Troy. All the voluminous testimony introduced for the purpose of showing the reasonableness of these rates as local rates is irrelevant. Their reasonableness as local rates on local hauls is not in issue—it is only their reasonableness as parts of through rates for through hauls that is questioned.

(d) *No extra expense shown justifying increase of rates on continuation of haul from Montgomery to Troy—Burden of proof.*—The Commission, in commenting on the charge of a local from Montgomery to Troy as a part of the through rate from Louisville, Cincinnati, St. Louis, and the West to Troy, further says:

“The evidence does not show what the expense at Troy is,

but the relatively disproportionate charge for the haul and expense between Troy and Montgomery casts the burden on the carrier of justifying it, and hence of showing what the expense is. It is a matter lying peculiarly within the knowledge of the carrier. In the case of *McMorran v. Grand Trunk Railway Co. of Canada* (2 L. C. C. Rep., 252) it is said: "The evidence does not show with any precision what these several expenses (terminal, among others) are. * * * The defendants assume in their brief that the burden of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers a difficult and onerous rule of evidence. It would be impossible for the petitioners to show such facts otherwise than by the defendants' agents, and it was clearly the province of the defendants to make them appear. No presumption arises that a rate is reasonable from the mere fact that it has been put in effect; and when it is *prima facie* disproportionate or relatively unequal, the onus is on the carrier to justify its charges when challenged on these grounds. The knowledge of the justifying circumstances and conditions relied on is peculiarly in possession of the carrier." (Record, pp. 60-61.)

The rule laid down above that where rates are *prima facie* disproportionate or relatively unequal, the knowledge of the justifying circumstances being peculiarly in the possession of the carrier, the *onus* is on the carrier to justify its charges by making proof of such justifying circumstances, is manifestly correct. The defendants were thus challenged, or put upon notice, to prove the extra expense or other circumstance or condition incident to the continuation of the haul from Montgomery on to Troy, which authorized the great increase in the through rate for that portion of the through haul. They have wholly failed to do so. The extra expense, if any, would be the expense of transfer at Montgomery (if such transfer was made) from the cars of the Louisville and Nashville road to those of the Alabama Midland or Georgia Central, and the excess, if any, of the terminal expenses at Troy over those at Montgomery.

The evidence is positive that there is no such transfer. The

testimony of B. M. Talbot (third direct interrogatory, Record, 223) is that—

“Freights from Ohio River points to Troy all come in carloads, and it would not be necessary to transfer from car to car at Montgomery. *It comes to Troy in the original car in which it is loaded at the initial point.*”

Theodore Welch testifies (fourth cross-interrogatory, Record, 280):

“On through shipments from Louisville, Cincinnati, and St. Louis to Troy *via* Montgomery, in case of carloads, as corn, flour, meat, etc., *freight would go through to Troy in the same cars in which it is brought to Montgomery*; at least that is the general rule.”

J. S. Corcoran, agent for the Alabama Midland road at Troy, after stating that his “testimony is based upon his observation and experience in the line of his duties as agent,” testifies:

“If transfers were made at Montgomery, it would be shown on the freight bill; and these freight bills, as a general thing, do not show that such transfers have been made at Montgomery, but indicate that *the cars have come through.*” (Third direct and first cross interrogatories, Record, 233. Other witnesses to the same effect.)

As to terminal expenses at Troy.—On this point B. Dunham, superintendent of the Alabama Midland Railway, testifies (fourth cross-interrogatory, Record, p. 273):

“On through shipments from Louisville, Cincinnati, and St. Louis to Troy and Montgomery, respectively, I don’t think there is any difference between the terminal expenses at Troy and those at Montgomery.”

W. J. Haylow, master of transportation of the Alabama Midland road, testifies (latter part of answer to fourth cross-interrogatory, Record, p. 270):

“There is a difference in the terminal expenses at Troy and those at Montgomery, those at Montgomery being greater on

account of the larger force to be maintained for handling the freight, billing, switching, and inspecting, all of which does not have to be done at Troy."

The testimony of a number of other witnesses is of the same import. The witnesses, of course, refer to the expense per a given amount of traffic, as on account of the greater volume of business to Montgomery the aggregate expenses there must exceed those at Troy. Mr. Dunham certainly knew this.

The defendants have shown, therefore, no justifying circumstances arising from extra expense or in any way connected with the service of transportation between Montgomery and Troy. *They in fact make no such claim. Their sole plea is competition.* (The same is true as to through shipments of cotton from Troy *via* Montgomery to New Orleans, the subject-matter of *charge 6.*)

IX.

ERROR OF CIRCUIT COURT OF APPEALS IN HOLDING IN EFFECT THAT THE THROUGH RATE FROM THE WEST TO TROY IS REASONABLE BECAUSE THE PROPORTION OF THAT THROUGH RATE CHARGED FOR THAT PART OF THE HAUL EXTENDING FROM MONTGOMERY TO TROY IS REASONABLE AS A LOCAL RATE.

It is to be borne in mind that this case concerns through rates only; that a through rate, no matter how composed, is an entirety. As said by the Commission in the case of the *Georgia Railroad Commission v. The Clyde Steamship Company et al.* (5 I. C. C. R., 370).

"The total rate for through carriage over two or more lines, whether made by the addition of established locals or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority. How the rate is made is only material as bearing upon the legality of the aggregate charge. * * * *The*

reasonableness of the added local, as a local rate, is not under consideration in a case where the rate complained of is the total charge over different lines."

(a) The circuit court of appeals states as one of the grounds upon which it bases its decision that—

"The rates in question when *separately considered* are not unreasonable or unjust." (Record, 418.)

The rates referred to are, doubtless, the components of the through rates from the West to Troy—namely, the proportion of those rates charged for the haul to Montgomery and the proportion charged for the continuation of the haul on from Montgomery to Troy.

The inference of the court is, that if the components of a through rate be *separately* reasonable, the total through rate must be reasonable.

This is plausible, but will be perceived to be fallacious as applied to this case, when it is considered that the proportion of the through rate for the haul from Montgomery to Troy is the local rate established for a strictly local shipment originating at Montgomery and terminating at Troy, and *the testimony as to its reasonableness is only that it is reasonable as a local rate. There is no evidence showing, or tending to show, that it is reasonable as a proportion of a through rate.* (See Part VIII of this argument.)

The distinction between through and local rates is recognized in the case of the *Chicago and Northwestern Railway Company v. Osborne* (52 Fed. Rep., 912), in which the decision was rendered by Mr. Justice Brewer. He says:

"A through tariff on a joint line is not the standard by which the separate" (local) "tariff of either company is to be measured or condemned."

If this be true, as it unquestionably is, then the converse proportion for which we contend is equally true, namely, that

a local rate of one member of a through line is not the measure of what its proportion of a through rate should be for the same haul.

X.

MONTGOMERY, SINCE THE ADVENT OF RAILROADS, NOT A DISTRIBUTING POINT AS TO TROY—ERROR OF CIRCUIT COURT IN HOLDING THAT THE HAUL FROM THE WEST TO TROY CONSISTS OF TWO DISTINCT HAULS, A THROUGH HAUL TO MONTGOMERY PLUS A LOCAL HAUL FROM MONTGOMERY TO TROY, AND THAT, THEREFORE, THE CHARGE OF A LOCAL RATE FOR THE LATTER IS JUSTIFIABLE.

(a) It appears, as found by the Commission, that "the through rates to and from Troy are based on the Montgomery rates, and in making them Montgomery is treated as what is called a 'trade-center' or 'basing point,' and Troy as a local point." (Report of Commission, Record, p. 63; answer to fifth cross-interrogatory, Record, p. 281.)

This "trade-center" or "basing-point" system of rate making exists only in the South, and will be discussed at length hereinafter in Part XI of this argument.

It is claimed that "trade centers" are entitled to rates which discriminate in their favor and against smaller surrounding localities. The only plausible ground upon which this claim can be based is that they are *natural distributing points* for such localities. Being such natural distributing points, the traffic would come from points of origin to them as reservoirs in the first instance, and then be distributed to surrounding localities. As in that case there would be two distinct hauls—one a through and one a local—a reason might exist for charging a through rate for the long haul to the distributing point or reservoir and a comparatively high local rate for the short haul thence to the point of consumption.

Before railroads were built to Troy, Montgomery may have been a distributing point as to Troy, or a source of supply of goods to the Troy merchant. It does not appear, and it is not reasonable to suppose, that there were then through rates to Troy. The consignor at Cincinnati, for instance, could not get a through *water and wagon or rail and wagon rate* and a through bill of lading to Troy. Goods were consigned from the point of origin to the Montgomery merchant, were delivered to him at Montgomery, were bought from him by the Troy merchant, and hauled in wagons to Troy. Montgomery might properly, under those circumstances, be claimed to have sustained toward Troy the relation of a distributing point.

But such is not now the case. *The railroad does not stop at Montgomery, but goes on to Troy. If the river had gone on via Montgomery to Troy, Montgomery would never have been a distributing point as to Troy. The Troy merchant buys his goods direct from Louisville, Cincinnati, St. Louis, and the West, or Baltimore, New York, and the East* (answer to second cross-interrogatory, Record, p. 255), and they are shipped through to Troy, under a through bill of lading, naming an aggregate through rate, without stoppage or delivery to anyone at Montgomery. The haul is a through haul in carloads, the cars in which the goods are originally shipped passing through to Troy.

(b) *A fundamental error in decision of the circuit court is the finding that the continuity of the through haul from the West to Troy is broken at Montgomery.*—The theory of the court below appears to be that Montgomery even as to through shipments to Troy is a distributing point as to Troy; whereas Montgomery can occupy that relation to Troy only where the shipment is to Montgomery in the first instance and delivery is made there, and the goods are then reshipped to Troy. In that case

the shipment to Montgomery would be a through shipment terminating at Montgomery under a through rate, and the shipment from Montgomery to Troy a local shipment at a comparatively high local rate.

As to shipments *via* Montgomery to Troy, Montgomery does not occupy the relation of distributing point to Troy. If so, Birmingham and every point the cars pass before reaching Troy would be distributing points as to Troy. The fundamental error, as we respectfully submit, in the decision of the circuit court is the finding that under the evidence the haul in cases of shipments from the West to Troy is a through haul to Montgomery plus a local haul on to Troy. The court says on this point:

"The evidence shows that in cases of transportation of property from Northwestern points (such as St. Louis, Cincinnati, or Louisville) to Troy, Ala., the shipments come to Montgomery and from there to Troy; that the rate is so much from the shipping points to Montgomery; that the Alabama Midland Railroad charges what is called the local rate from Montgomery to Troy, and this is complained of." (Record, p. 123.)

The idea of the circuit court evidently is that the shipments are not continuous shipments through or by way of Montgomery to Troy, but that there are two shipments—first, a through shipment terminating at Montgomery, and then a local shipment from Montgomery to Troy. We think the evidence is to the contrary—that of the witnesses for roads as well as those for the complainant.

B. M. Talbot, a wholesale grocery merchant at Troy, testifies:

"When class goods are shipped from Louisville, Cincinnati, St. Louis, and other Ohio River points *via* Montgomery to Troy, *they are shipped on a through bill of lading to Troy at an aggregate through rate. Freight from Ohio River points to Troy all come in carloads, and it would not be necessary to transfer from car to car at Montgomery; it comes to Troy in the original car in which it is loaded at the initial point.*" (Answer to third interrogatory, Record, pp. 223-224.)

Charles Henderson, also a wholesale grocery merchant at Troy, testifies:

"When class goods are shipped from Louisville, Cincinnati, and St. Louis *via* Montgomery to Troy, they are shipped under a through bill of lading and for an aggregate through rate. There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the road of the Georgia Central or Alabama Midland companies, but the car containing such freight is transferred from one road to the other, unless the through car is disabled, and then the transfer is made from the disabled car at the station at which the disabling occurs." (Third direct interrogatory, Record, p. 228.)

J. B. Coreoran, agent for the Alabama Midland Railway at Troy, testifies:

"When class goods are shipped from Louisville, etc., to Troy *via* Montgomery, they are shipped under a through bill of lading at an aggregate through rate." (Third direct, Record, p. 233.) "I have never had any class goods shipped from Louisville, Cincinnati, and St. Louis, or other Ohio River points *via* Montgomery to Troy for my individual account, but in the line of my duties as agent have handled the bills of lading on such shipments, and have observed that the through rate on such shipments was specified in the bill." (First cross, Record, 233.)

Theodore Welch, general freight agent of the Louisville and Nashville Road, testifies:

"On through shipments from Louisville, etc., to Troy *via* Montgomery in case of carloads, as corn, flour, meat, etc., the freight would go through to Troy in the same cars in which it is brought to Montgomery. At least this is the general rule." (Fourth cross, Record, 280.)

The evidence of many other witnesses is to the same effect, and there is none to the contrary.

(c) The ruling of the circuit court and the claim of counsel for the roads that the haul from the West to Troy is broken in two at Montgomery and consists of a through haul to Montgomery and a local haul from Montgomery to Troy, is

doubtless based upon the fact that the proportion of the through rate from the West to Troy charged for the haul from Montgomery to Troy is the local rate between those points. The haul is *physically*, so to speak, and in fact a through and continuous haul to Troy, without change of cars, under a through rate and through bill of lading, but it is claimed that the charging as a part of the through rate of the local rate from Montgomery to Troy *ipso facto* changes the nature of the haul or breaks the continuity of the haul at Montgomery and makes it a distinct local haul from Montgomery to Troy, and justifies the charge of the comparatively high local rate. In other words, the position is that the charging of the local rate as a proportion of the through rate makes the haul a distinct local haul, and, being thus made a distinct local haul, the high local rate is justifiable. *This is simply setting up the wrong in justification of the wrong.*

(d) *Social Circle Case*.—In *Cincinnati, New Orleans and Texas Pacific Railway v. Interstate Commerce Commission* (162 U. S., 193), known as the "Social Circle Case," this court held that when goods are "shipped under a through bill of lading from a point in one State to a point in another," the continuity of the haul is not broken by the terminal carrier of the through line charging its local for the portion of the haul over its road.

(e) *The policy of the law favors the continuity of hauls*.—The law favors it if it does not expressly enjoin the *continuity* of hauls. This is apparent from section 7 of the act to regulate commerce, which is as follows:

"SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, express or implied, to prevent by change of time schedule, carriage in different cars, or by other means or devices the carriage of freights from being continuous

from the place of shipment to the place of destination;" and "no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intention to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act."

The Commission in their report and opinion in this case, in commenting on this section of the law, say (Record, p. 54):

"The continuity of the haul is not broken in fact and can not be broken in law by one or more carriers, members of a through line, charging local rates as their proportion of a through rate. If the continuity of the carriage may not be thus interrupted, can the exaction of local rates exempt the carrier from liability under the law by placing him in the attitude of a strictly local carrier? If this be conceded, the most vital provisions of the law may be readily evaded and nullified. For instance, a terminal carrier, part of a continuous through line, could elect to charge on through traffic its local to one or any number of stations on its road and a less through rate to stations beyond, and no violation of law could be alleged, because as to the short haul the carrier would not be subject to the act. The charge of a local rate and declaration by a carrier that as to through transportation to certain points on its road it is a local carrier can not alter the fact. The law regards the substance of things, and a palpable device for evasion of the law will not be allowed to accomplish its purpose."

XI.

TRADE-CENTER SYSTEM OF RATE MAKING—IT PREVAILS IN THE SOUTH ALONE—INTERSTATE COMMERCE LAW (PARTICULARLY FOURTH SECTION) AIMED AT THIS SYSTEM—ITS DISASTROUS EFFECTS ON THE COUNTRY AND ON THE ROADS.

(a) The relatively high rates from and to Troy from all directions, as compared with those from and to Montgomery, result largely if not exclusively from the fact that they are established

in pursuance of what is known as the "TRADE-CENTER" or "basing-point" system of *rate making*. (Record, pp. 63, 281.)

When railway managers determine to make a locality a "trade center" or "distributing point" they do so, of course, by giving it advantages in rates over surrounding points, the object being to induce such surrounding points to procure their goods and supplies from the "trade center" or "distributing point" and not from the point of origin of the traffic. The roads thus secure the transportation of the traffic not only to the trade center, but back again or on to the local points at the comparatively high local rates.

This is done, as in the case of shipments from Ohio River points to Montgomery and through Montgomery to Troy, by making comparatively low through rates to the "distributing or basing point" (Montgomery), and charging as part of the through rate from that point on to a point beyond (like Troy) the comparatively high local rate; or, as in case of shipments of cotton *from Troy via Montgomery to New Orleans*, by charging the local rate from Troy to Montgomery as a part of the through rate from Troy to New Orleans; or, where the shipments are from the East to Troy and through Troy to Montgomery, by charging to the shorter-distance point (Troy) a rate equal to the through rate to Montgomery, plus the local rate back to Troy.

Under this system the merchants in the localities surrounding the "distributing point" or "trade center" can be undersold at their very doors, and they can get their goods at the same rate from the "distributing point" as from the point of origin of the traffic. The tendency, if not a necessary result, of this is that surrounding localities are made tributary to the "distributing or basing point," and the territory in which they are located is spoken of as territory of such point.

The growth of localities surrounding "trade centers" is retarded, if not entirely prevented, under this system of discrimination, and the "trade centers" and their commercial establishments become comparatively large and flourishing. The circuit court in its opinion lays stress upon the fact that Troy is a city of only 4,000 or 5,000 population and not "a large distributing point" as compared with Montgomery, and the circuit court of appeals states as a material matter that the "volume of population and business at Montgomery is many times larger than it is at Troy." *This is citing the disastrous effect of the discrimination against Troy as a justification of it.* In reply, we say, in the language of Judge Cooley:

"If the discrimination has existed and has had its effect, the fact that large establishments have thereby been encouraged is no reason why the injustice should be perpetuated." (*In re L. & N. R. R. Co.*, 1. C. C. R., p. 31.)

I quote below in full, as a part of this argument, what Judge Cooley says about the *Southern trade-center system of rate making* in the case *supra*:

"The preeminence of such trade centers in the territory (the South) reached by the petitioner's road is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and noncompetitive towns—the former, being the 'trade centers,' must have had some influence to increase steadily the disparity in growth and prosperity.

"By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country, it was said, are dependent on the trade centers for their supplies, and they get, indirectly, the benefit of low rates to the distributing points in lower prices than could otherwise be given to them. In proportion also as the distributing points are prosperous they can and do extend to the dealers at other points credit and indulgence. *The prevalence of such ideas and the acting upon them in making freight tariffs give to railroad managers a power of determining within certain limits what*

towns shall be trade centers and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet as they do not at the same time feel a like pressure from noncompetitive points, it is obvious that justice to such points is in great danger of being overlooked; and it is altogether likely that it is so to some extent.

"One result is that towns recognized by railroad managers as trade centers come to be looked upon as towns of special privileges, and other towns strive for recognition as such and complain, perhaps, of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases given to build up trade centers, and as they had had that effect and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, first, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade center; and, second, if the discrimination has existed and has had its effect, the fact that large establishments have thereby been encouraged is no reason why the injustice should be perpetuated. This statute aims at equality of right and privilege not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them."

(b) The greater charge for the shorter than the longer haul over the same line prevailed only in the South under the trade-center system of rate making at the time the act to regulate commerce was enacted. Hence, the long and short haul rule of the fourth section was aimed at that system.

The third section of the act also prohibits the *giving of one locality an undue or unreasonable preference or advantage over another locality.*

In *Martin et al. v. Chicago, Burlington and Quincy R. R. Co.* (2 I. C. C. R., pp. 46, 47) Judge Cooley, in speaking of the act as it relates to the "trade-center" system of *rate making*, says:

"But a fatal difficulty with the theory that a trade center, as

such, is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the act to regulate commerce. One of the reasons for the passage of that act was that by means of rebates and other contrivances large towns and heavy dealers secured advantages which gave them a practical monopoly of the markets and shut out the small towns and dealers. * * *

In contemplation of a law which was enacted in the interest of equality between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so; but if not, they are still entitled, as against any action of this Commission, to have the benefit of such favorable rates as do not unjustly discriminate against others."

In a recent decision by the Supreme Court of the United States in a case brought up from the United States circuit court for the district of Colorado (*Union Pac. R. Co. v. Goodridge*, 149 U. S., 680, 37 L. ed.), Mr. Justice Brown, in speaking of the purpose of the Colorado act under consideration as being the same as to *intrastate* commerce as that of the act to regulate commerce as to *interstate* commerce, says very forcibly that it was designed "to cut up by the roots the entire system of rebates and discriminations in favor of *particular localities*, special enterprises, or favored corporations," and pertinently refers to the fact that carriers being dependent upon the will of the people for their corporate existence are "bound to deal fairly with the public, to extend them reasonable facilities for the transportation of their persons and property, and to put at their patrons *upon an absolute equality*" (citing *Schofield v. Lake Shore & M. S. R. Co.*, 42 Ohio St., 571; *Sanford v. Catawissa, W. & D. R. Co.*, 24 Pa., 378; *Messinger v. Pennsylvania R. Co.*, 36 N. J. L., 407; *McDuffee v. Portland & R. R. Co.*, 52 N. H., 430).

The "trade-center" or "basing-point" system of *rate making* is spoken of by Mr. Aldace F. Walker, who was then a member

of the Interstate Commerce Commission, and is now, we believe, high authority in railway circles, as being *peculiar to the South*, and he mentions Montgomery, among others, as one of such favored localities. Theodore Welch speaks of the system as prevailing "especially in the Southern States" (Record, p. 281). That this system is peculiar to this section of the country is a well known fact. In a case before the Commission (3 I. C. C. R., pp. 24, 25, 46, 47, 48, 49) in which the tariffs and classifications of the Atlanta and West Point and other Southern railway companies were under investigation, Mr. Walker says:

"And it is also peculiarly true that long-established usage has here created a system of so-called 'trade centers,' which control the collection and distribution of commodities throughout the territory in their vicinity, a course of business which has become so firmly grounded that the territory surrounding the local centers is frequently spoken of as naturally tributary to them.

"Previous to the passage of the act to regulate commerce it was the universal custom in this section of the country to establish rates to certain basing points, subject to the fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points." * * *

"While this method was satisfactory to the centers which it created and maintained, the smaller towns and rural communities protested against a system which worked so obviously to their disadvantage. Since the passage of the act the number of these favored localities has decreased in the Southern States, and upon many of the lines the disparity in rates as between them and intermediate or local stations has been diminished." * * *

"The belief has forced itself upon this Commission with increasing strength during the period in which it has observed the operation of various systems of rate making in the Southern States and elsewhere that this system of combined joint and local rates to points in the Southern States intermediate to the so-called basing points is in a very great degree responsible for the lack of local development in that region, except at favored localities." * * *

"They say that the railroads must live or there can be no commerce by rail, and they insist that any reduction of rates means loss of revenue, which is against the public interest and

the carrier's right, unless the rate in question be unreasonable *per se*. But it is not clear that the application of the general rule of the law would involve permanent loss of revenue. *The stimulus given to business at intermediate points will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it.* * * *

"At present the amount shipped to intermediate points is relatively very small. Giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industries and enterprise. Such encouragement would not be at the expense of the coast points, but would in its reflex action and by necessary laws ultimately work in their favor also."

From these quotations it appears to be the opinion of Mr. Walker, *first*, that the "trade-center" or "basing-point" system of rate making is to a very great degree responsible for the lack of local development in the South except at favored localities; *secondly*, that by reason of an increase of traffic to local points resulting therefrom an abandonment of this system would not involve permanent loss of revenue to the roads, and, *thirdly*, that the localities now favored as trade centers would not be injured, but rather benefited, by abolishing this system of rate making, because the encouragement by relatively fair rates to local points of local industry and enterprise would, in the language of Mr. Walker, "in its reflex action and by necessary laws ultimately work in favor of such trade centers also."

As the "trade-center" system of rate making does not prevail in the North or other sections of the country, where commercial centers and railways have attained the highest degree of prosperity, it is a fair inference that that system is not essential to their prosperity in the South.

To sum the matter up, "honesty" or fair and impartial dealing "is the best policy" for railway corporations as well as natural persons, and will result in benefit to both the carriers and their patrons. Rates to all localities, large and small, should be established upon a basis fairly remunerative to the

roads, with no relative inequality as between those localities. To allow carriers to depart from this rule will be to give them unlimited license to nullify at will the remedial provisions of the statute, and will open wide the door to all the evils which it was enacted to suppress. Carriers are transcending the limits of their legitimate sphere of action as *public servants, dependent upon the will of the whole people for their corporate existence*, when they undertake to charge one locality or portion of the people more than another for a less or the same service, with a view to equalizing commercial conditions as between rival markets or because of the exigencies of competition between themselves.

XII.

EXCUSES FOR THE PREVALENCE OF THE TRADE-CENTER SYSTEM OF RATE MAKING AND DEPARTURES FROM THE LONG AND SHORT HAUL RULE IN THE SOUTH AND NOT IN THE NORTH.

In explanation of the fact that the *trade-center* or *basing-point system of rate making* does not prevail in the North as in the South, counsel for appellees states (see Mr. Baxter's printed argument in circuit court, p. 12), *first*, that—

"The trade centers in the North are so near together that it is *impossible for the railroads to charge higher rates to intermediate local stations than to competitive stations beyond.*"

And *second*, that—

"*The volume of local traffic in the North is so much larger than it is in the South that the Northern railroads are not compelled to make concessions, which Southern roads are forced to make in order to get competitive traffic.*"

In placing the alleged necessity for the trade-center or basing-point system of *rate making* in the South on the latter ground the roads are pleading the baneful effect of the system as an

excuse for it. One reason why "the volume of local traffic in the North" *as compared with through or competitive traffic* "is so much larger than in the South" is the fact that local stations in the North are given rates relatively equal to those to the large trade centers, while in the South local stations are discriminated against in favor of such trade centers. If this discrimination were done away with, the so-called necessity for it would no longer exist.

The testimony is that the competitive traffic of the Alabama Midland road for the year ending June 30, 1893, was nearly equal to its noncompetitive or local traffic—(\$152,862.33 as against \$174,588.43).

(McLendon, direct 13, Record, p. 352.)

While, as stated in Mr. Baxter's printed argument in the circuit court, "the competitive traffic of the Pennsylvania Railroad, though large, amounts to but an insignificant percentage of the total business."

The great difference in this respect between these two roads is significant, and is undoubtedly due, in part at least, to the fact that the Alabama Midland road discriminates against its local traffic to local stations in favor of competitive traffic to trade centers and the Pennsylvania road does not.

The prosperity of a road must be more dependent upon the general prosperity of communities or stations along its entire line than upon that of a few widely separated trade centers or distributing points. We believe that, not only as stated by Mr. Walker (*supra*), is this "system of combined joint and local rates to points in the Southern States intermediate to the so-called basing points responsible for the lack of local development in that region, except at favored localities," but that it has also contributed largely to the depressed financial condition of the Southern roads themselves. A policy on the part of the roads of discrimination, the natural effect of which is to increase the

already great natural advantages of large commercial centers and to correspondingly retard the growth and depress the business interests of local stations, is suicidal.

XIII.

ALLEGED ERROR OF THE COMMISSION IN FAILING TO DISTINGUISH BETWEEN "NATURAL TRADE CENTERS" OR BASING POINTS ON THE SEACOAST OR NAVIGABLE RIVERS, AND THOSE ARBITRARILY CREATED BY RAILROAD OFFICIALS AT RAILROAD JUNCTIONS.

Counsel for the roads contends that the Commission errs in failing to distinguish between "natural trade centers" and those arbitrarily created by railroads.

The Commission does not condemn "natural trade centers" as such. It condemns the *system of rate making* illustrated in this case, under which the natural advantages of such centers over surrounding localities, by reason of their location on navigable streams and bodies of water, are increased by undue and unreasonable preferences and advantages in rail rates. The roads in doing this are misapplying the Scripture: "To him that hath shall be given, and from him that hath not shall be taken away even that which he hath." Practically, Troy is removed more than four times her natural distance from the river by the rates from the West.

The fact that large cities—in other words, natural trade centers or distributing points—have existed always and before railways came into operation is evidence that railways and preferential rates are not essential to their existence and prosperity. It also appears, from the fact before mentioned, that cities flourish in the North and other sections where the Southern trade-center system of *rate making* has not prevailed, that that system is not essential to their prosperity.

XIV.

THE CLAIM ON THE PART OF THE ROADS THAT DISCRIMINATION AGAINST TROY IS JUSTIFIED BECAUSE OF THE ALLEGED FACTS THAT MONTGOMERY, COLUMBUS, AND EUFAULA WERE TRADE CENTERS BEFORE RAILROADS WERE BUILT, AND THAT TROY WAS THEN DISCRIMINATED AGAINST. THE TRUE MISSION OF RAILWAYS IS TO DO AWAY WITH DISCRIMINATION AGAINST INLAND TOWNS. TROY A COMPETITIVE POINT.

In his printed argument filed in the circuit court counsel for the roads says:

"All three of these" (Montgomery, Eufaula, and Columbus) "were 'trade centers' and 'basing points' long before a mile of railroad existed on the face of the earth. * * * They were important 'trade centers' in those early days, and their prominence over adjacent interior towns, such as Troy, *was far greater then than now*. Troy was then, as now, a local, non-competitive point." (Mr. Baxter's argument in circuit court, pp. 10, 11.)

And again:

"Of course there is a discrimination in favor of Montgomery and Eufaula as compared with Troy in the matter of rates, but this discrimination has always existed, and in no sense has it been created or increased by the railroads. On the contrary, the railroads have diminished the discrimination to the exact extent of the difference between the wagon rates which formerly prevailed and the rail rates which now prevail to and from Troy." (Mr. Baxter's argument in circuit court, p. 11.)

1. In the first place, there is no evidence whatever to sustain these statements. If the court will judicially know that Montgomery, Columbus, and Eufaula, being situated on rivers, were commercial or "trade centers" before railroads come into operation, it can not know that their "prominence over adjacent interior towns, such as Troy, was far greater then than

now;" that discrimination against Troy "has always existed," and "that the railroads have diminished the discrimination," etc. *These are pure assumptions.*

2. If the discrimination against Troy existed before railroads were built, this is *no justification for its continuance*. If the fact of the prior existence of an evil is ground for its perpetuation, there can be no progress or reform. The act to regulate commerce was designed to eradicate the discriminations which were in existence at its passage, *whether new or old*.

The position of counsel for the roads is *antiprogressive*. It is, or should be, the *mission* of railways to remove the disadvantages to which inland towns away from rivers were subjected before railways came into operation. *The railways have done this in the cases of Atlanta, Birmingham, Anniston, Opelika, Meridian, and a number of other cities in the South, which are not located on rivers or navigable bodies of water.* In Georgia, before rail lines were built to Atlanta, it was a struggling village, and Augusta, Savannah, and Columbus (river towns) were the principal cities and trade centers; and in Alabama, before rail lines were built to Birmingham, there was no Birmingham at all, and Mobile, Montgomery, and Selma (river towns) were the principal trade centers. The railways have wrought the change, and this, we repeat, is their true mission.

3. The statement that "the railroads have diminished the discrimination against Troy to the *exact extent of the difference between the wagon rates which formerly prevailed and the rail rates which now prevail to and from Troy,*" is not authorized by any proof in this case.

Concede that wagon rates from Montgomery to Troy were higher than the rail rates now are, and it does not establish the proposition that the roads *have diminished discrimination*.

It must further appear that the wagon rates to Troy were a larger percentage of the water rates to Montgomery than the rail rates to Troy are of the rail rates to Montgomery.

Can the court know this judicially? *Can the court know that before the roads were built to Troy and Dothan goods could be reshipped from Montgomery and carried in wagons through Troy, 68 miles beyond, to Dothan, at an aggregate rate from point of origin of 26 cents a hundred pounds (\$5.20 per ton) less than the aggregate rate from point of origin at which they could be reshipped from Troy to Dothan?* This is what counsel for appellees call upon the court to know judicially. *If the court will know anything on the subject in the absence of proof, it will know the reverse of what seems so improbable.*

In order to sustain the statement that the roads have diminished the discriminations against Troy, which it is alleged existed before the advent of railroads, *proof should have been made:*

(a) Of what water rates to Montgomery were before railways came into operation.

(b) Of what wagon rates from Montgomery to Troy were.

(c) That the wagon rates were *more than from four to seven times* as high per mile as the water rates.

Before the advent of railways the water routes had a practical monopoly of the business of public carriage on long hauls, as the former now have. *The presumption is, that the water rates were then much higher than now.* The court will know this judicially, if it will know anything on the subject in the absence of proof.

4. The statement that the "prominence of Montgomery, Eufaula, and Columbus over adjacent interior towns, such as Troy, was far greater before railroads were built than now," is contrary to the fact.

It is well known that before the advent of railroads Montgomery had a population of not over 3,500. She now claims between 35,000 and 40,000. Troy before the roads were built was a flourishing inland town, the county seat of Pike County, a county of a large and prosperous white population, and then had a population of at least 600. It is now about 4,000. Troy before the time of the railroads was therefore about one-sixth the size of Montgomery. It is now not more than *one-tenth*.

5. *Troy a competitive point.*

(a) The statement that "Troy was then" (before the era of railroads), "*as now*, a local noncompetitive point," is not only not supported by any proof, but is contrary to the evidence of the witnesses for the roads. That evidence shows that Troy is now a competitive point—that is, *a point for the carriage of traffic to which different lines of transportation compete or may compete*.

Troy is at the intersection of two roads. The two roads, the Alabama Midland and Georgia Central, which reach Troy, connect at one point or another not far distant from Troy with all the lines, whether all rail or rail and water, running from northeastern cities to Montgomery, and also with the lines from Louisville and other Ohio River points to Montgomery and Columbus. E. B. Joseph, a witness for the roads, testified that "either of these roads at Troy has all the connections with points of the Plant system and the Central of Georgia." (Answer to fifteenth direct interrogatory, Record, p. 301.)

To the same effect is the testimony of T. H. Moore (answer to fifteenth direct interrogatory, Record, p. 221), H. M. Hobbie (answer to sixteenth direct interrogatory, Record, p. 298), and J. H. Clisby (answer to fifteenth direct interrogatory, Record, p. 304).

Unless their rates are established by agreement there is com-

petition between the Alabama Midland and Georgia Central and all the lines with which they are connected for traffic to Troy. From Cincinnati and the West goods may be brought to Troy by the lines *via* Chattanooga and Columbus, as well as by the lines *via* Montgomery, and from the East they may come to Troy by the *all-rail* lines *via* Atlanta, Montgomery, and other points, as well as by the sea and rail lines *via* Charleston and Savannah. (For a detailed statement of the lines by which traffic may be brought to Troy see Record, p. 55.)

All these lines have through rates to Troy as well as to Montgomery.

The roads have introduced testimony to the effect that because the small village of Ozark is on an extension of the Georgia Central road known as the "Ozark Extension," and also on the Alabama Midland road, it is a competitive point. (Answer of J. W. Nall to third cross-interrogatory, Record, p. 246. To the same effect is the testimony of Charles B. Goldthwaite, third cross-interrogatory, Record, p. 250; Joel D. Murphree, third cross-interrogatory, Record, p. 259; H. B. Cowart, third cross-interrogatory, Record, p. 267.)

If the comparatively small town of Ozark is thus made a competitive point, how can it be said that Troy is not?

(b) Counsel for the roads now admits that Troy is a competitive point.

In a supplemental brief (pp. 6, 7, filed in the circuit court of appeals by counsel for the roads, after the statement that "the defendants do not pretend to offer the slightest justification" for the higher rates to Troy than to Montgomery, "*except the solitary fact of competition at the longer-distance point,*" Montgomery, the question in the case is stated to be "*whether the competition at the long-distance point*" (Montgomery) "*is so dissimilar from the competition of the short-distance point*" (Troy) "*as to justify the rates charged,*"

This is an admission that Troy is a competitive point and is a marked departure from the position theretofore maintained. The contention up to this time on the part of counsel and of railroad officials examined as witnesses for the roads has been that Troy was a strictly "*local, noncompetitive point*" on the Alabama Midland Road, and *that has been the main ground upon which the charge of local rates between Montgomery and Troy as a part of through rates from the west has been sought to be justified.*

As we have seen, the court below, in its opinion, places the haul from Montgomery to Troy, on a through shipment from the West to Troy, on the same footing as that of a local shipment originating at Montgomery and terminating at Troy as a local station. (Record, top p. 124.)

XV.

TROY DOES NOT SEEK ADVANTAGES IN RATES OVER LOCALITIES IN HER VICINITY, AS INTIMATED IN THE OPINION OF THE CIRCUIT COURT.

In the opinion of the circuit court it is said:

"It is common knowledge, it is history, that Montgomery was a distributing point before the railroad system was known and when there were no trunk lines, such as we now have, competing for a share of her business. Troy is a city of about 4,000 or 5,000 population, with two railroads, one of which has but recently been built. It is not a large distributing point" (*and, it may be added, never will be under existing rates*), "and it is not on any navigable water course. The complaint would almost seem to be that the railroad companies had not made her a basing point: and that Montgomery, west of her on the Alabama River, and Columbus, east of her on the Chattahoochee River, being basing points, this operated to her prejudice as a business point—which it no doubt does—and this is perhaps her real cause of complaint." (Record, p. 122.)

The court, it will be observed, does not charge Troy squarely with *the audacity of* claiming the advantages enjoyed by

Montgomery and Columbus as basing or distributing points—the court hesitates to impute such badness to Troy—but says that Troy's complaint “would *almost* seem to be that the railroad companies had not made her a basing point.”

There is nothing in the complaint or evidence indicating a desire on the part of Troy to be made a basing point and given advantages in rates over the localities around her. Her complaint is that undue and unreasonable preferences and advantages in rates are given her competitors in business, Montgomery and Columbus, which, as the court states, “*operate to her prejudice as a business point.*”

The merchants and business men of Troy all testify that if Troy is given rates relatively equal to the Montgomery and Columbus rates, and this should result in a revision of the rates to the localities immediately around Troy, so as to make them “correspondingly low” or relatively equal to the Troy rates, Troy will still be benefited.

Charles Henderson, a wholesale grocery merchant at Troy, testifies:

“If a change of rates as prayed for to the Interstate Commerce Commission should result in the revision of rates to Ozark, Dothan, Brantley, Searight, and the other named stations, so as to make the rates to those places correspondingly low, the effect would be to benefit my business and the business of Troy to such intermediate stations and the territory around Troy on the lines of the Georgia Central and the Alabama Midland Company. It would be better for the business of Troy than the present rate if the rates to Troy were put on the same basis with Montgomery rates, and if at the same time the rates to Union Springs, Brantley, Luverne, Ariosto, and other points on the M. & G., the M. & E., and Alabama Midland railroads should also be upon the same basis, and would benefit them for the reason that Troy's strongest competitors are Montgomery and Columbus, which enjoy rates that Troy does not, and under the new rates Troy would be on an equal footing with those points.” (Answer to third cross-interrogatory, Record, p. 231.)

Oliver C. Wiley, president at one time of the Alabama Midland road and now a manufacturer of cotton-seed oil and fertilizers at Troy, testifies:

"If a change of rates as prayed for by the board of trade of Troy to the Interstate Commerce Commission should result in the revision of rates to Dothan, Ozark, Brantley, Searight, and other intermediate stations, so as to make the rates to such intermediate stations correspondingly low, the effect on my business and the business to these stations and the territory around Troy on the lines of the Alabama Midland and Georgia Central would be to allow us to reach these points in Troy's territory upon an equal footing with Montgomery and Columbus. As rates now stand they are in favor of Montgomery and Columbus. To a certain extent it would help the intermediate stations and the territory around by giving them a lower rate of freight from the East and West. At many of these points the buyers are small and they would still trade at Troy, Montgomery, or Columbus, and in this event Troy would stand an equal showing in selling them as Columbus or Montgomery." (Answer to third cross-interrogatory, Record, pp. 254-255.)

To the same effect is the evidence of all the other witnesses examined on this point.

XVI.

TROY A DISTRIBUTING PORT, BUT NOT A "LARGE ONE,"
SAYS THE CIRCUIT COURT.

The court below, it will be noted in the above extract from the opinion, lays stress upon the fact that "Troy is a city of" only "about 4,000 or 5,000 population, with two railroads," and "is not a large distributing point"—that is, as compared with Montgomery and Columbus. It is conceded that Troy is a "distributing point," but it is held that, being small in comparison with her rivals in business, Montgomery and Columbus, she is not entitled to be placed on a basis of relative equality with them. This appears to be a recognition of *the*

policy of the roads to build up large towns, large interests, and large dealers at the expense of the small.

It is incredible that such a policy should receive indorsement from any source in this country and under a statute like the act to regulate commerce, which, to use the forcible language of Justice Brown in *Union Pacific Co. v. Goodridge* (149 U. S., 680), heretofore quoted, was designed "to cut up by the roots the entire system of discrimination in favor of *particular localities*, special enterprises, or favored corporations," and under which carriers are "bound to deal fairly with the public," upon whose will they are dependent for their corporate existence, "and to put all their patrons upon an *absolute equality*."

It would seem to follow, if Montgomery and Columbus are entitled to preferential rates as to the comparatively large territory of which they claim to be distributing centers, that Troy (though she does not make the claim) would be, also, in respect to the territory as to which she is a distributing point.

It is a matter of surprise that Troy is a distributing point to any extent under the prejudice and disadvantage to which she is subjected in the matter of rates. Her growth and size, hampered as she is by rates preferential to her competitors, are remarkable.

Oliver C. Wiley testifies:

"There are about 83 mercantile houses in Troy. There is only 1 strictly wholesale merchant, but from 5 to 10 merchants do a mixed wholesale and retail business, and the rest are retail only. The bulk of the groceries are bought in the West, and some dry goods and clothing are bought in Cincinnati, and the bulk of the dry goods and light groceries are bought in the East. The volume of trade of Troy annually is \$3,400,000. My answer to the volume of trade of Troy per annum is based partly upon my personal knowledge, partly upon data collected by the Board of Trade of Troy, of which

board I am a member. There were between 35,000 and 40,000 bales of cotton received in Troy during the year 1893. There are the following manufacturing enterprises now in the city of Troy: Oil mill, fertilizer factory, acid chamber, ice factory, cotton mill. The number of hands employed by these manufacturing enterprises is about 250. The industrial enterprises of said town have an invested capital as follows: Troy fertilizer works, with \$150,000 capital, employing about 100 hands; compress, with \$50,000 capital, employing about 25 hands; water and electric-light works, with a capital of about \$475,000, employing 25 hands; cotton mills, with about \$40,000 capital, employing about 50 hands; ice factory, with \$10,000 capital, employing about 5 to 10 hands; 2 planing mills, capital invested about \$25,000, employing about 25 hands; furniture factory, with \$5,000 invested, employing from 5 to 10 hands; 6 cotton warehouses, capital invested about \$30,000, employing about 30 hands; machine shop, with a capital invested of about \$10,000, employing about 10 hands; 2 cotton ginneries, with a capital invested of about \$10,000, employing about 20 hands, and 2 hotels, capital invested about \$25,000, number of hands employed unknown." (Answer to second cross interrogatory, Record, p. 254.)

This is a wonderful showing for an *inland* town, surrounded by powerful competitors to whom preferential rates are given. It shows great inherent power, which the roads have failed to entirely neutralize, and gives an idea of what Troy might do with relatively fair rates.

XVII.

COMPARISONS OF WAGON RATES WITH RAIL RATES WHOLLY
VALUELESS AS SHOWING THE REASONABLENESS OF THE
LATTER.

From the fact that wagon rates between Montgomery and Troy before the building of a railroad to Troy were probably higher than the rates established by the rail lines, counsel infers the reasonableness of the latter.

Comparison of a rail rate with a wagon rate for the purpose

of showing the reasonableness of the rail rate is wholly valueless, for the following among other reasons:

1. Where a wagon or cart carries one ton of freight, a railroad carries thousands.

2. Where a wagon or cart carries freight one mile, a railroad carries it hundreds or thousands of miles.

3. Wagons and carts have no monopoly of transportation over a particular roadway.

When railways came into operation, however, they superseded other modes of transportation and obtained a practical monopoly as to hauls of any length. They have an absolute monopoly over their own roadbeds, whereas public highways for vehicles are free to all. It is this monopoly which, both in England and this country, has called for legislation regulating their rate charges. In the case of the *Attorney-General v. B. & D. J. Ry. Co.* (2 Eng. Railway and Canal Cases, pp. 132, 133) the Lord Chancellor said that the object of Parliament in its several enactments for the regulation of railways and their charges was to prevent "those who should get the monopoly of the carriage of the public from exercising that monopoly to the prejudice of individuals." Our act protects *localities* as well as individuals. (Section 3, act to regulate commerce.)

4. Railroads operate under charters derived from the public granting them rights of way and other exclusive franchises, and hence, as said by Justice Brown in *Union Pacific Company v. Goodridge* (149 U. S., 680), are bound to deal fairly with the public upon whose will they are dependent for their corporate existence.

There is no analogy whatever between transportation by rail and transportation in wagons and carts. The circumstances and conditions in the two cases are substantially dissimilar.

XVIII.

CONSIDERATIONS WHICH LED THE COMMISSION TO PRESCRIBE RATES FROM LOUISVILLE, CINCINNATI, AND ST. LOUIS TO TROY NOT IN EXCESS OF THOSE NOW IN FORCE FROM THOSE CITIES TO COLUMBUS AND EUFAULA—AVERAGE RECEIPTS PER TON PER MILE, ETC.

The rates from Louisville, Cincinnati, and St. Louis, respectively, to Columbus and Eufaula are the same. The Commission in its order requires that the rates from those cities to Troy shall not exceed those to Columbus and Eufaula. (It is in this way that the rates to Eufaula are involved in this case.) The attention of the court is asked to the following statement by the Commission of the considerations upon which this portion of its order is based. After reaching the conclusion that the rates to Troy were too high the Commission says:

"The question remains to be determined what the rates to Troy shall be. In arriving at a conclusion on this point no light is furnished by proof of cost of service or other matters proper to be considered in determining what rates are just and reasonable from the standpoint both of the carrier and shipper. If there is an expense incident to the continuation of the through haul to Troy, which calls for and justifies exceptional rates, the burden, as we have seen, is upon the carrier to show it. The roads, however, do not claim that there is anything in the nature of the service of transportation to Troy which justifies the disproportionate rates charged to that city, but base their defense of those rates on another and distinct ground (which we hold not to be established), namely, dissimilarity of circumstances and conditions resulting from water and rail competition at Montgomery. In the absence of proof of exceptional conditions, the transportation from Montgomery to Troy, including terminal expenses, will be presumed to be not more costly to the carrier than for like distances in the same or like territory. On examination we find that the class rates from Louisville, Cincinnati, and St. Louis, and Ohio River points generally, are the same to Columbus, Eufaula, and

Opelika. The distances from Louisville and St. Louis to Columbus by the shortest available route (that via Birmingham and Opelika over the Columbus and Western road) are 9 miles greater, and by the routes via Montgomery are about 42 miles greater than to Troy. The distance from Cincinnati to Columbus by the shortest route appears to be about 14 miles less than to Troy. The distances to Eufaula are greater than to Troy, and to Opelika they are somewhat less. The distances from the cities named to Columbus and Eufaula being on the average greater than to Troy, and other things being equal, the rate to Troy should, if anything, be slightly less than to those cities. No substantial dissimilarity of circumstances and conditions justifying a higher rate to Troy has been attempted to be shown. The class rates in cents per hundred pounds (except Class F, which is per barrel) to Columbus, Eufaula, and Opelika, and to Troy from Louisville, and the excess of the Troy rates over those to Columbus, Eufaula, and Opelika, are given in the following table:

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
From Louisville to Columbus, Eufaula, and Opelika.....	107	92	81	68	56	46	28	36	26	25	50	55	50
From Louisville to Troy.....	140	39	113	95	75½	62	45	50	37	32	99	59	66
Excess of Troy rates	33	38	32	27	19½	16	17	14	8	7	19	4	16

* Per barrel.

*The excess of the Troy rate is the same under the rates from Cincinnati and St. Louis.

*The above rates to Columbus, Eufaula, and Opelika, if applied to Troy, yield the following rates in cents per ton per mile on the different classes:

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate per ton, per mile	3.94	3.39	2.90	2.50	2.06	1.69	1.03	1.32	1.07	0.92	1.84	2.03	0.92

*These mile ge rates average on all the classes 1.97 cents, and are somewhat greater than are realized on the application of the same through rates to the hauls to Columbus and Eufaula. The above average of 1.97 cents and the above mileage rates on 8 out of the 13 classes are greater than the average receipts per ton per mile and estimated cost of carrying a ton a mile for the years ending June 30, 1891 and 1892, as reported by the Louisville and Nashville Railroad Company,

the Alabama Midland, and Georgia Central, and which are given in the following table:

Name of road.	1891.		1892.	
	Average receipts.	Estimated cost.	Average receipts.	Estimated cost.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Louisville and Nashville Rwy. Co.	0.968	0.614	0.948	0.621
Alabama Midland Railway.....	1.745	.990	1.356	1.400
Central Railroad of Georgia.....	1.329	1.012	.....	.....

"Columbus and Eufaula are located in or are contiguous to the territory in which Troy is situated, and the former, at least, is in active competition with Troy for business in the country immediately around Troy. We are of the opinion that the class rates to Troy from Louisville, Cincinnati, and St. Louis should be, at least, as low as those above given to Columbus and Eufaula."

AVERAGE RECEIPTS PER TON PER MILE, ETC.

It will be observed that there are *many* substantial reasons given by the Commission showing the justice and propriety of its conclusion, that the rates from the West to Troy should not exceed those to Columbus and Eufaula. Counsel for the roads, however, passing by the many weighty and unanswerable considerations leading to its action mentioned by the Commission in the above extract from its report, seek to fix the attention of the court upon the reference by the Commission to the fact that the average of the mileage rates under the rates prescribed for Troy is greater than the "*average receipts per ton per mile*" and "*estimated cost of carrying one ton a mile*" over the roads of the Louisville and Nashville, Alabama Midland, and Georgia Central Companies, as reported by them to the Commission for the years ending June 30, 1891 and 1892. They enter into a lengthy argument and take testimony to show that this data furnished by them annually to the Commission, and which they have from time immemorial made out at great trouble for their own use, is wholly valueless for any purpose.

They are driven to the necessity of discrediting their own statistics.

We deem it unnecessary to enter into a discussion of this question, further than to say that, while the "average receipts per ton per mile" on all traffic do not indicate with mathematical accuracy what is a reasonable rate in a given case, yet the fact that a rate yields a rate per ton per mile in excess of those average receipts is a *circumstance (in connection with others) showing or tending to show that that rate is a reasonably high and not an unreasonably low rate.*

However that may be, the other matters named by the Commission and upon which their action was mainly based fully justify that action.

XIX.

EVIDENCE INTRODUCED BY CARRIERS AS TO EFFECT OF A NAMED INCREASE OF RATES TO MONTGOMERY—IT ONLY SHOWS THAT EXCESSIVE RAIL RATES MAY DIVERT TRAFFIC TO WATER OR RAIL AND WATER LINES—ORDER OF COMMISSION CAN NOT BE COMPLIED WITH BY SUCH INCREASE.

Counsel for the roads filed the following interrogatories to a large number of witnesses:

"Interrogatory No. 9. Suppose the rail rates from New York to Montgomery should be increased as follows: On first class, 22 cents per 100 pounds; on second class, 19 cents per 100 pounds; on third class, 17 cents per 100 pounds; on fourth class, 16 cents per 100 pounds; on fifth class, 14 cents per 100 pounds; on sixth class, 12 cents per 100 pounds, what effect, if any, would it have toward inducing the shipment of such freight from New York to Mobile by ocean and thence to Montgomery by river? (Record, 193.)

"Interrogatory No. 10. Suppose the rail rates from Louisville, Cincinnati, and St. Louis to Montgomery were increased as follows: On first class, 42 cents per 100 pounds; on second class, 38 cents per 100 pounds; on third class, 35 cents per 100 pounds; on fourth class, 32 cents per 100 pounds; on fifth class, 23½ cents per 100 pounds; on sixth class, 21 cents per

100 pounds; on Class A, 17 cents per 100 pounds; on Class B, 19 cents per 100 pounds; on Class C, 13 cents per 100 pounds; on Class D, 12 cents per 100 pounds; on Class E, 21 cents per 100 pounds; on Class H, 26 cents per 100 pounds; on Class F, 26 cents per barrel, what effect, if any, would it have toward inducing the shipment of freight from Louisville, Cincinnati, and St. Louis to Mobile, and thence *via* steamboat from Mobile to Montgomery? (Record, 193.)

"Interrogatory No. 11. Suppose the rail rates on cotton intended for export and shipped from Montgomery to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk, should be increased 13 cents per 100 pounds, what would be the effect, if any, toward inducing the shipment of such cotton from Montgomery to Mobile by river and thence by vessel to said Atlantic ports (Brunswick, Savannah, West Point, and Norfolk), or by vessel direct from Mobile to European ports?" (Record, 193.)

The object of these interrogatories is, presumably, to show that if the rates to and from Montgomery were made as high as those to and from Troy the traffic to and from Montgomery would be diverted to the water lines, and hence that it is impracticable to do away with the relative inequality in rates as between those cities by advancing the rates to the latter.

Leslie Gilbert, secretary of the Commercial and Industrial Association of Montgomery, and a member of the law department of the Louisville and Nashville Railroad Company, a witness for the roads, answered that "*if the matter of time was not material to the merchants of Montgomery*" he thought the specified increase in rates would "*increase the tonnage of traffic*" by the water lines. (Answers to ninth and tenth direct interrogatories. Record, p. 294.)

George C. McCormick, a merchant of Eufaula, and witness for the carriers, testified that if the rates from Louisville, Cincinnati, and St. Louis to Eufaula were increased as supposed in the interrogatories, he did not think it would have the effect of inducing the shipment of freight by the water lines to Eufaula, "*for the reason that the increased expense, such as lighterage, transfer, and wharfage would more than counterbalance*

the difference in freight." (Answer to eighth direct interrogatory, Record, p. 340.)

The other witnesses for the roads, however, answered unqualifiedly that in their opinions the supposed increase of rates would divert the bulk of the traffic to the water lines *via* the Chattahoochee and Alabama rivers. Let it be conceded that this fact is established by the evidence, and what does it amount to? Only this, that excessive rates by the direct rail lines will drive the traffic to the indirect water and rail and water lines. Where rates, as in the case of those to and from Montgomery, are fixed by carriers and maintained for a long period of time, the presumption is that those rates are, in the opinion of the carriers, reasonably remunerative. This presumption rests upon the same principle as the presumption of sanity. Any arbitrary material increase of such rates, then, would render them more than reasonably remunerative—in other words, excessive.

Take the case of rates from Louisville, Cincinnati, and St. Louis to Montgomery, and compare them with the rates from those cities on a haul over the Louisville and Nashville Railroad through Montgomery, 180 miles farther on, to Mobile, shown in the table below:

Distances.	Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
644 miles via M. & O. .	From St. Louis to	90	75	65	50	40	35	25	25	25	20	28	25	45
805 miles via L. & N. .	Mobile.													
625 miles via L. & N. .	From St. Louis to	126	115	98	77	64	51	35	39	31	25	56	43	54
	Montgomery.													
669 miles via L. & N. .	From Louisville to	90	75	65	50	40	35	25	25	25	20	28	25	45
	Mobile.													
490 miles via L. & N. .	From Louisville to	98	92	78	63	52	41	28	31	24	20	48	39	49
	Montgomery.													
779 miles via L. & N. .	From Cincinnati to	98	83	73	54	44	39	28	27	27	22	31	28	49
	Mobile.													
600 miles via L. & N. .	From Cincinnati to	108	102	83	71	59	47	32	33	26	22	52	17	44
	Montgomery.													

(Record, p. 64.)

* Per barrel.

Assuming, as we must, that the rates to Mobile are reasonably remunerative, the much higher rates to Montgomery, the shorter haul by 180 miles, must be much more remunerative, and to increase them, as specified in the interrogatory, No. 10 *supra*, for instance, 42 cents, on first-class goods, would make them excessive, if not prohibitory; it would make the Montgomery first-class rate from St. Louis \$1.68 as against a 90-cents rate to Mobile, a difference in favor of Mobile of 70 cents. *Under these rates goods could be shipped through Montgomery 180 miles farther on to Mobile, and then back up the river to Montgomery at a less rate than to Montgomery direct.* Can proof, that an increase of the rate to Montgomery to an extent that will make it manifestly exorbitant, if not prohibitory, will divert traffic to the river line, be held to justify the admitted discrimination in rates against Troy? That is the purpose for which this evidence is introduced—otherwise, it is irrelevant, and has no bearing whatever on the case. What is said as to the supposed increase of rates to Montgomery applies with equal force to such increase to Columbus and Eufaula.

The order of the Commission can not be complied with by an increase of the rates to Montgomery. It might be inferred from these questions to so large a number of witnesses as to the effect, in their opinion, of the increase of rates to the extent named in the interrogatories that the Commission had ordered such an increase of rates, or that the order of the Commission might be complied with by such an increase. The Commission has not ordered any increase of rates whatever to any point. It has only ordered a decrease or reduction in the rates to Troy. Nor can the order of the Commission be complied with by an increase of rates to Montgomery, Columbus, or Eufaula.

The order of the Commission prescribing the rates to Troy from Louisville, Cincinnati, and St. Louis is as follows:

"It is ordered that the roads participating in the traffic involved cease and desist from charging and collecting on class goods shipped from Louisville, St. Louis, and Cincinnati to Troy a higher rate *than is now charged* and collected on such shipments to Columbus and Eufaula." (Record, p. 69.)

This can not be complied with by an increase in the rates to Montgomery, Columbus, or Eufaula.

The order of the Commission prescribing the rates to Troy from the East is as follows:

"It is ordered that the roads participating in the traffic involved cease and desist from charging and collecting on class goods shipped from New York, Baltimore, and the Northeast to Troy a higher rate than is charged and collected on such shipments to Montgomery." (Record, p. 69.)

It may be that the latter subdivision of the order might be complied with by increasing the rates from the East to Montgomery to the extent named in the interrogatories, *but for the fact that such increase would render the rates excessive*, which is forbidden by section 1 of the law. It can not be assumed that the order of the Commission can be complied with by unlawful means—particularly when the natural and lawful method of reduction in the rates to Troy can be resorted to.

XX.

THE PLEA OF NECESSITY FROM A FINANCIAL STANDPOINT
FOR THE PRESENT DISCRIMINATORY RATES TO TROY—
THE RATES PRESCRIBED BY THE COMMISSION REASON-
ABLY REMUNERATIVE.

The roads not only attempt, as above shown, to prove that the discriminations against Troy can not be obviated by an increase in the rates to Montgomery and Columbus, *but also that it is impracticable to give Troy relief by reducing the rates*

to Troy as ordered by the Commission, because the Alabama Midland Railway failed to make operating expenses for the fiscal year from July, 1892, to June, 1893.

(a) The year—July, 1892, to June, 1893—in which it is claimed the operating expenses exceeded the gross earnings of the road, is stated by witness McLendon, on cross-examination, to have been “an exceptionally bad year” for the road. (Answer to ninth cross-interrogatory, Record, p. 355.)

He is corroborated in this by W. J. Haylow, master of transportation of the Alabama Midland road. (Answer to ninth cross-interrogatory, Record, p. 271.)

McLendon was asked, on cross-examination, to give for the preceding year (1891-92) and for the following year (1893-94) statistics similar to those he had given for the exceptionally bad year (1892-93); and he replied that “he had not the information at hand necessary to give” such statistics. (Answer to eighth cross-interrogatory, Record, p. 355.)

It is to be presumed from this that records of the gross earnings and operating expenses of the road were only kept for exceptionally bad years, or else that the showing for the years inquired about would not benefit the road in this case.

The financial result of the operation of the road for a “selected year,” which is shown to have been an exceptionally bad year for the road, is not a fair criterion of the result of the operation of the road in general, and does not even tend to sustain the plea of the defendants that the existing discriminations against Troy are essential to the maintenance of the road.

(b) This plea was insisted upon before the Commission. Their answer (see Report and Opinion of the Commission, p. 15; Record, p. 65) was in part as follows:

“Unjust discrimination as between localities or individuals

can not be essential to the business prosperity of the roads. On the contrary, we believe that in the end, if not immediately, their financial welfare would be promoted by the application in the matter of rate making of the principle of absolute fairness as between all interests, large and small, enjoined by the statute."

In other words, fair dealing can not, in the nature of things, fail to prove ultimately to be the best policy for the roads. Relatively equal rates to all points, large and small, instead of building up a few favored "trade centers" at the expense of surrounding localities, will tend to a distribution of prosperity, will increase the traffic to the comparatively small towns, and correspondingly increase the revenues of the carriers, and that, too, without detriment to the "trade centers." This commends itself to our reason as well as our sense of justice, is in accordance with the views (as we have shown) of able and impartial students of the question, and is supported by practical results in the North and other sections where our Southern "trade-center" system of rate making has not prevailed.

(c) Discrimination against *one* locality or station on a road is not justifiable because the *operations in general* of the road have resulted in loss.

(d) *The financial condition of a road is not the test of remuneration. No matter what the relation between its earnings and* ^{expenses} ~~receipts~~ *, the road has no right to charge the public more than reasonable rates.*

This proposition is laid down and enforced by this court in a recent opinion delivered by Mr. Justice Harlan in the case of *Corington and Lexington Turnpike Co. v. Sanford et al.* (decided December 14, 1896), as follows:

"*The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just to the public. * * ** The

public can not properly be subjected to unreasonable rates, *in order simply that stockholders may earn dividends.* * * * If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public. So that the right of the public to use the plaintiff's turnpike upon payment of such tolls *as in view of the nature and value of the service rendered by the company are reasonable* is an element in the general inquiry whether the rates established by law are unjust and unreasonable."

(c) *The rates prescribed by the Commission will be reasonably remunerative.*—But it is difficult to understand why the rates prescribed by the Commission on through hauls from Louisville, Cincinnati, and St. Louis to Troy, which are the same as on such hauls to Columbus and Eufaula, should not be remunerative, in view of the fact, as shown in the report of the Commission, that those rates when applied to Troy yield a higher rate per ton per mile than when applied to Eufaula and Columbus. If the roads can be run on those rates to Columbus and Eufaula, why not to Troy? These rates to Troy prescribed by the Commission give also about the same rate per ton per mile as the rates to Montgomery and a higher relative rate, taking into consideration the fact that on shipments from the Ohio Troy is the longer-distance point, and also the rule that the rate per ton per mile decreases as the length of the haul increases. They yield also a very much higher rate per ton per mile than the rates to Mobile. If the roads can be run on a rate on *class 1 goods*, for example, of 90 cents per 100 pounds from Louisville to Mobile, why can they not be maintained on a rate of \$1.07 per 100 pounds, the rate ordered by the Commission to Troy, the haul to Troy being 127 miles shorter than to Mobile? The rate per ton per mile to Troy, under the rates ordered by the Commission, is, furthermore, greater than the average receipts per ton per mile and the estimated cost of carrying a ton a mile for the years ending

June 30, 1891 and 1892, as reported to the Commission by the Louisville and Nashville Railroad Company, the Alabama Midland, and Georgia Central. (Report and Opinion of the Commission, Record, p. 65.)

The same is true as to the rates prescribed by the Commission from the East to Troy and from Troy on cotton to New Orleans and the South Atlantic ports.

XXI.

CHARGES 1, 2, 3, AND 6.

Charge 1.—As alleged in *charge 1*, the Alabama Midland and the Georgia Central Railway companies “charge and collect \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields, and only \$3 per ton on such shipments to Montgomery, the longer-distance point by both said roads, and all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland Company has to be hauled through Troy.”

In connection with this and subsequent charges the fact must be borne in mind that the dissimilarity of circumstance or condition which will justify a departure from the rule of the statute must relate to the *particular commodity* or traffic in respect to which the disparity in rates is made. For example, water or rail competition to the longer-distance point or dissimilarity in the service of transportation over the line to the shorter and longer distance points, respectively, as regards *sugar*, would not justify a departure from the rule of the statute as to *nails*, and so those differentiating circumstances, if shown as to *class goods* from Northeastern cities, do not justify a greater charge on phosphate rock from South Carolina and Florida for the shorter haul to Troy than the longer haul to Montgomery. *There is no proof whatever of any dissimilarity*

of circumstance or condition, either as respects the actual service of transportation or arising from competition, which can differentiate the shipment of phosphate rock to Troy from such shipment to Montgomery.

The Commission in their report and opinion say in reference to the proof before them on this point (Record, p. 58):

"An attempt was made to show that some shipments of phosphate rock had been made from the Florida points, Ocala and Tampa (the latter on the Gulf coast), *via* Mobile and the Alabama River, to Montgomery, but the witness testified he had never known such shipments to be made; that he himself had 'tried to get a rate by that line to Montgomery and had been unable to get it,' and that he thought it impracticable, as 'the goods would have to be transferred at Mobile to get to Montgomery and then would have to be hauled to the works.'"

The findings of fact set forth in the report and opinion of the Commission are, as we have before stated, declared by the act to be *prima facie* evidence as to each and every fact found. The above finding, moreover, will be seen on examination to be in accordance with the testimony before the Commission which has been admitted in evidence in this case. (Record, p. 137.) *There is therefore no ground for refusing to enforce the order of the Commission in relation to charge 1.*

*Charges 2 and 3.—The same is true as to charges 2 and 3.—*As to charge 2, that a higher rate is charged on domestic shipments of cotton from Troy than from Montgomery, through Troy to the Atlantic seaports, Brunswick, Savannah, and Charleston, the Commissioner finds the facts to be (Record, p. 56) that—

"The rates in cents per hundred pounds on cotton from Troy and Montgomery, respectively, to these ports are:

To.....	Brunswick.	Savannah.	Charleston.	West Point.	Norfolk.
From—					
Troy.....	47	47	52		
Montgomery.....	45	45	45	51	51

"When the complaint was filed, the cotton rate from Montgomery to Brunswick, Savannah, and Charleston was 40 cents per hundred pounds. It has since, as appears above, been raised to 45 cents, and the rate from Troy to Charleston has been raised to 52 cents."

The Commission finds in reference to charge 3 (Record, p. 58)—

"The evidence also sustains the allegation of the complaint that on shipments for export to the Atlantic ports, Brunswick, Savannah, West Point, and Norfolk from Montgomery and other localities within what is termed in the complaint "the jurisdiction" of the Southern Railway and Steamship Association, Montgomery and such other points are allowed, under the rules of that association, to ship through to Liverpool *via* any one of those ports at the lowest through rate *via* any of them at the date of shipment. In other words, at the lowest combination of inland and ocean rates from the interior point to the foreign market. This may result in a less through rate than the sum of the regular published tariff rail rate to port of transshipment and the ocean rate thence. For example, if at the date of shipment the regular rail rate to Savannah be 40 cents and the ocean rate from that port to Liverpool 53 cents, making a through rate of 93 cents, and the rail rate to Norfolk be 45 cents, and the ocean rate from that port to Liverpool 35 cents, making a through rate of 80 cents, Montgomery is allowed on a shipment *via* Savannah the latter rate of 80 cents, or 13 cents less than the sum of the regular inland rate to that port and the ocean rate on. This 13 cents is taken from the published inland rail rate to Savannah and not from the ocean rate. This privilege is denied to Troy, and the result is that on two shipments to Savannah for export made the same day, the one from Montgomery (the longer-distance point both over the Alabama Midland and the Georgia Central) and the other from Troy, the rate charged the Troy shipper is 45 cents and that charged the Montgomery shipper is only 32 cents. This discrimination would also exist between a shipment from any interior point consigned to the domestic port and one for export consigned to a foreign market."

There is no proof that any shipments of cotton, domestic or for export, have ever been made from Montgomery by water to the South Atlantic seaports—Charleston, Savannah, Brunswick, West Point, or Norfolk. Such shipments from Montgomery

are *via* Mobile to New Orleans or New York and North-eastern cities. Troy, through the Alabama Midland road and connections or through the Georgia Central and connections, has or should have the benefit of all the practicable rail lines to the South Atlantic ports. *There is no pretense of any material dissimilarity in the actual service of transportation from Troy and Montgomery, respectively, which can justify the higher rate from the shorter-distance point, Troy.*

Charge 6.—There is no excuse whatever shown for the exaction of the *local rate* from Troy to Montgomery on *through* shipments of cotton from Troy *via* Montgomery to New Orleans. This cotton is shipped under a through bill of lading and an aggregate through rate. What has heretofore been said as to the charge of a local rate from Montgomery to Troy as a proportion of the through rate from the West to Troy is applicable to *charge 6*.

XXII.

POWER OF THE COMMISSION TO PRESCRIBE MAXIMUM RATES IN A GIVEN CASE BEFORE IT.

1. *Not contended that Commission has authority to fix rates in the first instance.*

It is not contended in behalf of the Commission that it has authority under the act to regulate commerce to prescribe the rates of carriers in the first instance. That is the province of the carrier. Our position is in strict accordance with the rule laid down by the late Justice Jackson in the case of *The Interstate Commerce Commission v. Baltimore and Ohio Railroad Company* (43 Fed. Rep., 37), so often quoted by counsel for carriers, namely:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage to

persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."

If the rates established by carriers be just and reasonable under section 1 of the act to regulate commerce and not unjustly discriminatory under sections 2, 3, or 4, they do not come within the purview of that act, and the Commission has no authority in respect to their regulation.

When, however, rates have been established by carriers in the first instance, the question whether they are just and reasonable or not unjustly discriminatory—in other words, their lawfulness—may, under section 13 of the act, be *investigated* by the Commission, either on its own motion or on complaint made before it; and our contention is, where the reasonableness of the rates is the matter under investigation, that if they be found to be excessive or unreasonably high the Commission may, under sections 12 and 15 of the act, prescribe reasonable maximum rates.

(These sections of the act—12, 13, and 15—will be discussed further on.)

The power claimed for the Commission, then, is that of investigation of the lawfulness of rates established by carriers in the first instance, and, if they appear to be unlawful, the finding of what are lawful rates and the ordering of carriers to put the lawful rates in force.

2. *What this court holds in the Social Circle Case* (Cinn., N. O. and T. P. R. Co. et al v. Interstate Com. Com., 162 U. S., 184).

The *circuit court* made no finding as to the power of the Commission to prescribe rates. The *circuit court of appeals*

merely quotes *without comment* what is said on that subject by this court in the case known as the "Social Circle Case" (162 U. S., 184).

Counsel for the roads contends that in the "Social Circle Case" this court *unqualifiedly* denies power in the Commission to prescribe or "fix rates"—not only in the first instance, but also after due investigation on "issue made and facts found" in a given case.

We think this court in the Social Circle Case only denies to the Commission authority to itself fix rates in the first instance of its own motion and without a hearing of the parties to be affected, and that it expressly recognizes power in the Commission to prescribe reasonable rates after "issue has been made and the facts found" in a case before it.

We give below all this court said upon this subject:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to *itself* fix rates was mooted in the courts below, and is discussed in the briefs of counsel.

"We do not find any provision of the act that expressly, or by necessary implication, confers *such a power*.

"It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. *This is not necessarily so.* The reasonableness of the rate, in a given case, depends on the facts, and the function of the Commission is to consider these facts and give them their proper weight. *If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the Commission to be reasonable.*"

At the outset, it will be observed, this court states the question to be—

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to *itself fix rates*."

And then says:

"We do not find any provision of the act that expressly, or by necessary implication, *confers such power*."

The words "such power" necessarily refer to the "power to *itself* fix rates."

What is meant by the "power to *itself* fix rates" is next clearly indicated by the following language:

"If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, *itself* fixes a rate, that rate is prejudged by the Commission to be reasonable."

The Commission, then, "itself fixes a rate" when it does so without "withholding judgment until an issue has been made and the facts found." This is the power which this court denies to the Commission, and the denial of this power is equivalent to saying that if the Commission does "withhold judgment until an issue has been made and the facts found" it has the power to fix a rate.

The vice denounced by this court is *prejudgment*. Prejudgment is judgment *pre*—before or in advance. Before or in advance of what? Of a hearing upon a full presentation of issues and of all material facts.

The repetition of the phrase "*itself* fix rates" and the use of the word "*itself*" are significant and can not be claimed to be meaningless. This court can not be charged with loosely and unnecessarily using a word of such grave import in this connection.

To "itself fix a rate" is the exercise of *legislative* power, whereas the function of the Commission in ascertaining and prescribing a reasonable rate is *quasi judicial*. This distinction is drawn by this court in *Texas and Pacific Railway Company v. Interstate Commerce Commission* (162 U. S., p. 197), known as the "Import Case." The opinion in that case as well as the "Social Circle Case" was rendered by Mr. Justice Shiras, and both were handed down by him at the same time. In the "Import Case" there is furnished an example of what is

meant by the power "*to itself fix rates.*" In stating the facts, Justice Shiras says:

"It appears by the bill that on March 23, 1889, the Commission, *of its own motion and without a hearing of the parties to be affected*, had made a certain order wherein, among other things, it was provided as follows: 'Import traffic transported to any place in the United States * * * is required to be taken on the inland tariff governing other freight.'"

In this order the Commission, in the language of the court, "*of its own motion and without a hearing of the parties to be affected,*" or, as said in the Social Circle Case, "*without withholding judgment until an issue had been made and the facts found,*" fixed the same rates for the inland portion of the transportation of import traffic as were charged for the same inland haul on domestic traffic. In commenting on this order of the Commission fixing the inland rate on import traffic the court says:

"We do not wish to be understood as implying that it would be competent for the Commission, *without a complaint made before it, and without a hearing*, to subject common carriers to penalties. It is also obvious that if the Commission does have the power, *of its own motion*, to promulgate general decrees or orders which thereby become rules of action to common carriers, such exercise of power must be confined to the obvious purposes and directions of the statute. Congress has not seen fit to grant *legislative* powers to the Commission."

Another illustration of a commission *itself* fixing rates is furnished by State railroad commissions, which frequently, under the authority given them by the State laws, establish schedules of rates without a hearing in a given case.

In his brief in the circuit court of appeals counsel for the roads contended that in the Social Circle Case the "Commission did not attempt to '*itself fix rates*' of its own motion and without a hearing of the parties to be affected."

If this be unqualifiedly true, then the Supreme Court was misstating the case when it defined the question to be

"whether Congress intended to confer upon the Interstate Commerce Commission the power to *itself* fix rates," and was indulging in a mere *dictum* when it said:

"If the Commission, instead of withholding judgment in such a matter until an issue shall be made and *the facts* found, *itself* fixes a rate, that rate is prejudged by the Commission to be reasonable."

This proposition, however, it can be demonstrated, is not dictum, and the language used by the court in stating it is apt, and expresses the exact situation as disclosed by the facts bearing upon the rate to Atlanta (the rate then under consideration) and the Commission's action in reducing that rate.

The words "*the facts*," used by the court, of course mean *all the material facts*. The fixing of a rate on a partial finding of facts, without the consideration of other material facts, would be to that extent prejudging the reasonableness of the rate and would not meet the requirement that "*the facts*" be found.

This was what the Supreme Court held the Commission did in the Social Circle Case in fixing the rate from Cincinnati to Atlanta at \$1, when it had been \$1.07, and it was upon this ground the court overruled that part of the Commission's order. The court says:

"It is stated by the Commission in its report that the only testimony offered or heard as to the reasonableness of the rate to Atlanta in question was that of the vice-president of the Cincinnati, New Orleans and Texas Pacific Company, whose deposition was taken at the instance of the company; and in acting upon the subject the Commission say:

"This statement or estimate of the rate from Cincinnati to Atlanta (\$1.01 per 100 pounds in less than carloads) we believe is fully as high as it may reasonably be, if not higher than it should be, but without more thorough investigation than it is now practicable to make we do not feel justified in determining upon a more moderate rate than \$1 per 100 pounds of first-class freight in less than carloads. The rate on this freight from Cincinnati to Birmingham, Ala., is 89 cents, as compared with

\$1.07 to Atlanta, the distances being substantially the same. There is apparently nothing in the nature and character of the service to justify such difference, or, in fact, to warrant any substantial variance in the Atlanta and Birmingham rate from Cincinnati.'

"But when the Commission filed its petition in the circuit court of the United States, seeking to enforce compliance with the rate of \$1 per 100 pounds, as fixed by the Commission, the railroad companies, in their answers, alleged that 'the rate charged to Atlanta, namely, \$1.07 per 100 pounds, was fixed by active competition between various transportation lines, and was reasonably low.'

"Under this issue evidence was taken, and we learn from the opinion of the circuit court that, as to the rate to Birmingham, *there was evidence before the court which evidently was not before the Commission*, namely, that the rate from Cincinnati to Birmingham, which seems previously to have been \$1.08, was forced down to 89 cents by the building of the Kansas City, Memphis and Birmingham Railroad, which new road caused the establishment of a rate of 75 cents from Memphis to Birmingham, and by reason of water route to the Northwest such competition was brought about that the present rate of 89 cents from Cincinnati to Birmingham was the result."

The ground upon which the Supreme Court refused to enforce the order of the Commission as to the Atlanta rate, it thus distinctly appears, *was not want of power in the Commission to fix a rate*, but that the Commission had fixed the rate without all the material facts and all the material issues having been presented to it.

If the Supreme Court had been of the opinion and had intended to hold that the Commission had no power to prescribe a rate in a given case after issue made and a finding of the facts, it would have so stated and would not have entered into a discussion of the facts presented to the Commission and to the court and would not have based its decision upon the ground that the Commission had acted without consideration of all the material facts and issues.

The language heretofore quoted as used by the Supreme Court in the Social Circle Case in reference to the power of the Commission

to fix a rate, follows the discussion of the facts upon which the Commission acted in fixing the Atlanta rate, and must have had direct reference to the action of the Commission in fixing the rate to Atlanta without having all the material facts before it.

3. *Explanation on the part of the carriers of the meaning of the word "PREJUDGED," as used by this court in the "Social Circle Case."*

In the case of the *Interstate Commerce Commission v. North Eastern R. R. Co. of South Carolina et al.* (circuit court of appeals, fourth circuit), counsel for the roads (Mr. Smythe) gives the following explanation or construction of the word "*prejudged*," as used by this court in the "Social Circle Case."

"Fixing a rate which has not been the subject of discussion and has not been put in issue, is '*prejudgment*.' For instance, the rate in the Social Circle Case, against which complaint was made, and which was under examination and discussion, was \$1.07. There was no issue whatever about a \$1 rate. That rate was not in issue. No question had been made as to it, nor any investigation had. When the Commission, therefore, after investigating the facts as to the rate of \$1.07, went on and fixed the rate of \$1, that was, as to this \$1 rate '*prejudgment*,' before or in advance of a hearing upon a full presentation of issues, and of all material facts, because this \$1 rate had never been in issue, and as to it no investigation had ever been made."

(a) This is an admission that, under the decision in the Social Circle Case, the Commission has the power to prescribe a rate in a given case if *the rate prescribed is put in issue*.

The question as to the unreasonableness of a given rate necessarily involves the question, What is a reasonable rate? *The latter is within the issue presented by the former.*

The position of counsel for the roads is no more tenable than would be the contention that, in an action at law for the recovery of a debt, only the amount specified in the plaintiff's

declaration could be recovered, and that a verdict or judgment for a less sum would be invalid because that particular sum was not named in the declaration.

(b) *The statute expressly recognizes the question as to what is a reasonable rate as being within the issue raised by the question as to the unreasonableness of a given rate by providing in section 15 that in case injury is shown to have been sustained by anyone from an unreasonable rate charge under investigation, the Commission may award reparation for such injury. This involves the necessity of fixing the amount of the reparation, which can only be done by determining what is a reasonable rate, the amount of reparation being the difference between a reasonable rate and the excessive rate exacted.*

If what is a reasonable rate is not within the issue raised by the question whether a given rate is reasonable or unreasonable, then the awarding of reparation would be an act of prejudgment.

(c) Again, a rate is unreasonable or unjust only when it deviates from the standard of reasonableness or justice. It may therefore be said to be logically and practically impossible to determine a given rate to be unreasonable or unjust until there has first been an ascertainment of what is a reasonable or just rate.

(d) What is a reasonable and just rate can only be determined after investigation. It is therefore impracticable to put it *specifically* in issue in advance of an investigation.

1. *The Import Case (Texas and Pacific Railway Company v. Interstate Commerce Commission, 162 U. S., 197) recognizes authority in the Commission and courts to prescribe rates.*

In the Import Case, in which, as well as in the Social Circle Case, the opinion of this court was prepared by Mr. Justice Shiras and both were handed down at the same time, the

authority of both the Commission and the courts to prescribe a rate is expressly recognized.

In that case the inland rate on certain domestic traffic from New Orleans to San Francisco was proven to be 288 cents per 100 pounds. On foreign traffic of the same kind shipped from London or Liverpool via New Orleans to San Francisco, the inland charge by the rail line for the haul from New Orleans to San Francisco was very much less. The Commission ordered that the inland rate on this foreign traffic should not be less than the rate on domestic traffic, to wit, 288 cents per 100 pounds. *This was an order fixing the rate for the time being at 288 cents.*

This court (overruling both courts below) held this order to be invalid, *not on the ground that the Commission had no power to fix a rate*, but because the Commission, in fixing the rate, had refused to consider certain circumstances and conditions which the Supreme Court held to be material.

The court then expressly recognizes this power in the Commission by stating that it "should not have felt inclined to review the conclusions reached by the Commission or by the courts in respect to what were proper rates to be charged by the Texas and Pacific Railway Company if the inquiry had been conducted on a proper basis." This appears from the following extract from the opinion:

"We do not refer to these matters for the purpose of indicating what conclusions ought to have been reached by the Commission or by the courts below *in respect to what were proper rates to be charged by the Texas and Pacific Railway Company*. That was a question of fact, and *if the inquiry had been conducted on a proper basis [that is, if all the material circumstances and conditions had been taken into consideration] we should not have felt inclined to review conclusions so reached*. But we mention them to show that there manifestly was error in excluding facts and circumstances that ought to have been considered." (162 U. S., p. 235.)

The Commission based its order in the Import Case upon the proposition that ocean competition from London and Liverpool to San Francisco could not be considered as creating a dissimilar condition; but the circuit court of appeals placed its affirmance of the Commission's order on a different ground, namely, that the disparity between the inland rates on domestic and import traffic, respectively, was too great to be justified by the ocean competition, even if it could be regarded as creating a dissimilar condition. This court, after adverting to this position of the circuit court of appeals, says:

"This course proceeded, we think, upon an erroneous view of the position of the case; that question was not presented to the consideration of the court. There was no allegation in the Commission's bill or petition that the inland rates charged by the defendant company were unreasonable; *that issue was not presented*. The defendant company was not called upon to make any allegation upon the subject. *No testimony was adduced by either party upon such an issue.*"

Here we have clearly set forth and applied to a decree of the circuit court of appeals the rule laid down in the Social Circle Case and applied to an order of the Commission, that before a rate can be lawfully fixed there must be "an issue made and a finding of the facts."

This court has gone to this extent—no further—and in so holding necessarily finds that on "issue made and a finding of the facts" both Commission *and courts* may prescribe a rate in a given case. If this be not so, why does the court devote a large part of its opinion in the Social Circle Case to a discussion of the grounds upon which the Commission acted in fixing the rate to Atlanta, and in the Import Case to a discussion of the grounds upon which both the Commission and court acted in making the inland rate on foreign traffic the same as that on domestic, expressly stating in the latter case that if the Commission and the court below had "conducted

the inquiry on a proper basis we" (the Supreme Court) "should not have felt inclined to review the conclusion reached by the Commission and the courts below *in respect to what were proper rates to be charged by the Texas and Pacific Railway Company?*"

4. *The long and short haul feature of the Social Circle Case.*

There were two subdivisions of the order of the Commission in the Social Circle Case. The one to which we have referred fixing the rate to Atlanta, and the other directing the defendant roads to "cease and desist from charging or receiving any greater compensation in the aggregate for transportation of buggies, etc., for the shorter distance to Social Circle than they charge or receive for transportation of such freight for the longer distance over the same line to Augusta." This court upheld the latter part of the order, and thus affirmed the power of the Commission to make it.

Counsel for the road, however, contends that this part of the order does not "prescribe a maximum rate" to Social Circle, because it names no specific rate. It does direct that the highest or "maximum" rate to Social Circle shall not be in excess of that to Augusta. The rate to Augusta was proven to be then fixed at \$1.07 per 100 pounds, and *the witnesses for the roads all testified that this rate could not be raised.* The order, then, *for the time being, prescribed the same rate for Social Circle.*

If the roads, as a compliance with the order of the Commission, had raised the rate to Augusta to \$1.37 (the Social Circle rate then in force), the order of the Commission would have attached and held the Social Circle rate at that figure as a maximum. If, instead of raising the Augusta rate, they had reduced the Social Circle rate to \$1.07 (the Augusta rate then in force), the order of the Commission would have attached and held

the Augusta rate at not less than that figure. *The order of the Commission attaches to whatever change in rates may be made to either locality, and thereupon fixes the maximum or minimum rate to the other.*

If there be any distinction between such an order and one in terms prescribing a specific maximum rate, *it is not a distinction in principle.*

Four of the six subdivisions of the order in the present case, in pursuance of the "long and short haul" rule of section 4 of the law, forbid greater charges to or from Troy, the shorter-distance point, than to or from Montgomery, the longer distance point, and the power of the Commission to make those orders is therefore expressly recognized by this court in the Social Circle Case.

5. *Claim on the part of carriers that power in the Commission to prescribe rates can not be implied.*

It is contended on the part of the carriers that the power to prescribe reasonable rates is not given to the Commission expressly or *in terms* by the act to regulate commerce, and that it can not be held to be an incidental or implied power, and Judge Sage, in the opinion recently delivered in the case of *The Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.* (Fed. Rep., p. —), holds that it "is not an incidental right" or a "power to be derived by implication," but that "if found at all it must be found in express and specific language, among the powers and rights granted in direct terms," and that "it can not be imported into the act by *reason of the necessities of the case.*"

The mandate of section 1 of the act to regulate commerce in reference to rate charges is *positive and affirmative*, that—

"All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be reasonable and just."

By section 12 of the act the Commission is "required to execute" this and other provisions of the act.

The power to enforce the positive requirement, that rates "*shall be* reasonable and just," can not be executed, except by ascertaining and prescribing a reasonable and just rate. This can be demonstrated, as follows:

The Commission, it is claimed on the part of the carriers, only has authority to declare an existing rate unreasonable and to order a carrier to cease and desist from exacting that rate. There is always a margin between an unreasonable and a reasonable rate. Suppose the unreasonable rate in force to be *100 cents*, and a reasonable rate to be 80 cents, the margin between the two rates is 20 cents. If the Commission find the rate of 100 cents to be unreasonable and order the carrier to desist from charging it, the carrier will, naturally and properly on the assumption that he is honest in claiming the 100-cent rate to be reasonable, make as slight a deduction as possible. He may make a reduction of 1 cent, leaving a rate of 99 cents, and *this would be a compliance with the order of the Commission*. This would not, however, be the enforcement of the reasonable rate of 80 cents, and would not be an execution of the requirement of the law that rates "*shall be* reasonable and just."

If a new proceeding were instituted before the Commission, the Commission might make the same order as to the 99 cent rate, and the road might again make a reduction of 1 cent as a compliance with that order. This process might be continued until the reasonable rate of 80 cents was reached, but at the present rate of speed in these cases it would consume at least a half century and would amount to an absolute denial of justice. This, too, under a statute which requires "justice" to be administered "*speedily*" in these cases.

It is clear, then, that in order to discharge the duty imposed upon it of executing the requirement that rates "*shall be*

reasonable and just," the Commission must have the power to ascertain and enjoin a reasonable and just rate. But Judge Sage says that this power "can not be imported into the act *by reason of the necessities of the case.*" We are at a loss to understand why this is so under a highly remedial statute, and why an exception should in this instance be made from the general rules on the subject.

Those general rules, as laid down by standard authorities, are:

1. "Whenever a power is given by statute everything *necessary* to make it effectual, everything *essential* to the exercise of it, is given by implication." (Endlich on the Interpretation of Statutes, sec. 415.) For example, a statute which authorizes towns to contract debts or other obligations payable in money implies the power to levy taxes to pay them (*Citizens' Savings and Loan Association v. Topeka*, 20 Wall., 655), and "the private grant of mines gives the power to dig them." (Endlich, etc., sec. 418.)

2. "Whatever is *necessarily* or logically involved in an enactment is implied by it with the same force as if it were expressed." (Endlich, etc., sec. 421.)

3. "What is implied in a statute is as much a part of it as what is expressed." (Endlich on Interpretation of Statutes, sec. 417; Potter's Dwarries, etc., 115; *Wilson Co. v. Third National Bank of Nashville*, 103 U. S., 770.)

6. *The conceded power to declare existing rates unreasonable and to order carriers to desist from charging them, as much an implied power as the power to fix rates.*

It is conceded that the Commission has the power under the interstate-commerce law to declare existing rates unreasonable and to order carriers to desist from charging them, and the Supreme Court in the Social Circle Case (162 U. S., 184) sustained the action of the Commission in directing the defendants, in pursuance of the "long and short haul rule" of section 4 of the law, to make no greater charge for the shorter haul to Social Circle than for the longer haul to Augusta over the same line. *These powers are as much implied powers as the*

power to fix rates. Neither of these powers is given *in terms*, but is implied from the general requirement of section 12 of the law, that the Commission shall execute and enforce its provisions.

If these powers may be implied, why not the authority to prescribe reasonable rates?

The requirement of section 1 is not negative, but affirmative; it is not that *rates shall not be unreasonable*, but that *rates shall be reasonable*.

The language of the "long and short haul rule" of section 4 is not mandatory or imperative, but simply "*that it shall be unlawful*" for a carrier to make a greater charge for a shorter than a longer haul. Section 1, on the other hand, *commands* that rates "*shall be reasonable*."

There is, therefore, greater warrant in the language, as well as spirit of the law, for holding that the Commission has power to prescribe a reasonable rate than there is for holding that it has the power to declare a rate unreasonable or to enjoin a violation of the "long and short haul rule" of the law.

7. *Under sections 13 and 15 of the law, acts of "omission as well as commission" are to be investigated and forbidden by the Interstate Commerce Commission.*

Section 13 of the interstate commerce law provides:

"That any person * * * complaining of anything *done or omitted to be done* by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commission by petition," * * * and if "there shall appear to be any reasonable ground for investigating such complaint, it *shall be the duty of the Commission to investigate* the matters complained of." * * *

Section 15 provides:

"That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission * * * that anything has been *done*

*or omitted to be done in violation of the provisions of this act, by any common carrier * * * it shall be the duty of the Commission "to give "notice to said carrier to cease and desist from such violations * * * ."*

It is to be noted that in section 13 provision is made for complaints before the Commission of acts of "*omission as well as of commission.*" The language is that complaint may be made "*of anything done or omitted to be done by any common carrier subject to the act in contravention of its provisions;*" and in section 15 that if it appears after investigation of such complaint that "*anything has been done or omitted to be done in violation of the provisions of the act*" it shall be the duty of the Commission to notify the carrier to "*cease and desist from such violation*"—that is, cease and desist from such act of commission or omission. *Under this authority the Commission may prescribe reasonable rates and order the carrier to put them in force, if it appears that the carrier has omitted to do so.*

8. *Reparation.*—As heretofore stated, by section 15 of the act the Commission is authorized, in case injury is shown to have been sustained by anyone from an unreasonable rate charge or other violation of the law, to issue an order or notice to the carrier "*to make reparation*" for such injury. This involves the necessity of fixing the amount of the reparation, which in case of excessive rates can only be done by determining what is a reasonable rate, the amount of reparation being the difference between a reasonable rate and the excessive rate exacted.

9. *The act to regulate commerce a remedial statute.*—A general definition of a remedial statute is that "*it is a statute giving a party a mode of remedy for a wrong where he had none, or a different one, before.*" (Potter's Dwarrris on Stat. and Con., 73.)

There was a remedy at common law in case of excessive rate

charges in the shape of a suit for damages. This remedy was not deemed adequate, and Congress intended to give an additional and more effective remedy in the act to regulate commerce. Section 22 of that act provides that "nothing in this act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

At common law there was no direct mode or remedy for compelling carriers to charge reasonable rates, and the additional remedy in case of excessive rates provided in the act to regulate commerce is found in the command in section 1 that rates "shall be reasonable," and the requirement in section 12 that the Commission shall execute this command.

The act, being remedial, should be liberally construed so as to advance the remedy and suppress the mischief. The contention that the Commission has no power to prescribe reasonable rates, if sustained, will completely nullify the remedy, and the shipper will be in no better condition than he was in at common law.

10. In the act to regulate commerce Congress has at great expense provided for a Commission of five members with a corps of officers and employees, whose sole duty it is to enforce the provisions of that act and investigate questions arising under it.

When a case or proceeding is commenced before this Commission against a carrier for an alleged violation of a provision of the act, it is required that due notice of the charge be served on the carrier, that an opportunity be given to file an answer, and testimony be taken and argument had at a hearing before the Commission as in regular suits before the courts. One of the leading and most important provisions of the act is that rates "shall be reasonable," yet, in a case before the Commission involving the reasonableness of a rate, we are told

the Commission after full investigation and a hearing of all parties in interest has no power to enforce this requirement by prescribing a reasonable rate, although the law positively commands the Commission to enforce it and although the Commission must find what is a reasonable rate in order to award the reparation which the act requires it to award. We are further told that the only function of the Commission in such a case is to declare the particular rate in issue unreasonable and leave the carrier, with that limitation, free to determine what is a reasonable rate.

This is, indeed, an impotent conclusion.

"Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion." (*Lau On Bee v. United States*, 144 U. S., 47.)

11. The Commission has exercised the power to fix rates from the beginning, and its authority to do so has not until a comparatively recent date been questioned. In the case before the Commission of *Cox Bros. & Co. v. Lehigh Valley Railroad Company* (4 I. C. C. R., 576), counsel for complainants stated that he did not ask the Commission to establish any particular rate, but only to declare the existing rate unreasonable. Counsel for the road, however, strenuously objected, as follows:

"That will not do. If the Commission says that the present rates are unreasonable, they must say so because there is a different rate they have determined to be a proper one. It will not do for you to make a general finding, and to say: 'The present rates are unreasonable, but we do not know what they ought to be. We can not fix them for you. You must agree upon them amongst yourselves.' If unreasonable, say to what extent they are unreasonable; whether to the extent of a cent, or of many cents, or of a dollar a ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos. For Heaven's sake do not make the matter of the proper rates for carrying coal one to be regulated in a conference between the carrier and the shipper.

"If you have been convinced by these petitions that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty."

Thereupon the Commission said:

"Under such a rule applied to the subject of this complaint five several proceedings would be necessary to establish the reasonable rate, if in each proceeding the carrier deemed a 10-cent reduction sufficient. If, impressed with the belief that the existing rates were not exorbitant, the carrier should attempt compliance with the Commission's conclusion that they were excessive by making the least possible reductions, *repeated and continual applications would be necessary to correct a single abuse.* Certainly Congress intended no such absurdity as this, but, as insisted by counsel for the road, where we have been convinced that rates are unjust, it will be our duty to say what they ought to be, or at least to determine upon some rate any charge in excess of which would be unreasonable. If the duty of the Commission in respect to unjust and unlawful rates ends when it has been convinced that rates are unreasonable, and so decided them to be, and for any reason the Commission may not determine what are as well as what are not reasonable, the regulation provided by the statute begins with complaint and ends in confusion."

In *Perry v. Florida Central and Peninsular Railroad Company* (51 C. C. R., 110) the Commission say on this subject:

"The act to regulate commerce expressly requires that rates shall be reasonable. The Commission is in terms required to enforce the provisions of the act. In other words, the Commission's power, and consequently its duty, is to enforce reasonable rates. *It is not, of course, contended that the act confers on the Commission the general power to prescribe the traffic charges of carriers subject to its provisions.* The general scope of the act, as well as its specific provisions as to complaints to and investigations and reports by the Commission, forbid such an interpretation. But where complaint is made to the Commission, or a specific inquiry is instituted by it, on its own motion, and it is found after due notice, hearing, and investigation that an existing rate is unreasonable, the Commission is not restricted simply to finding that fact, and forbidding the carrier to charge the existing rate, but it may go further and enforce a reasonable rate; that is, the Commission may in such case, by clear implication from the language of the law, put in force a reasonable rate. Before it can do that it must necessarily determine what the reasonable rate is.

"The power of the Commission to ascertain and declare what is a maximum reasonable rate in case of a complaint charging unreasonableness also results from those provisions of the act requiring the Commission to determine what reparation, if any, should be made by the carrier.

"It has therefore been the unvarying practice of the Commission to fix reasonable rates where, on the hearing of a cause, circumstances seemed to call for such action, or at least to determine the rate any charge in excess of which would be unreasonable."

"The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and *ought not to be overruled without cogent reasons.*" (*United States v. Moore*, 95 U. S., 763; *Heath v. Wallace*, 138 U. S., 582; *Pennoyer v. McConnaughty*, 140 U. S., 23.)

12. Courts of equity frequently enjoin the charging of more than certain rates by railroads, on the ground that *suits for damages afford inadequate relief and to avoid multiplicity of suits.* In controversies between railroad companies and express companies the courts have granted injunctions requiring the railroads to carry express matter at rates designated by the court in the absence of agreement between the parties and until the further order of the court. (*Scofield et al. v. Lake Shore & Mich. South. R. R. Co.*, 42 Ohio State Rep., 572; *Express Cos. v. Railroad Cos.*, 10 Fed. Rep., 214, 215; *Wells, Fargo & Co. v. Or. Ry. & Nav. Co.*, 15 Fed. Rep., 562; *Same v. Oregon & C. Ry. Co.*, 18 Fed. Rep., 667, 673; *Dunsmore v. L., C. & L. Ry. Co.*, 2 Fed. Rep., 175.)

Under the English statutes the railroad commissioners exercise in fixing through rates a power analogous to that claimed for the Interstate Commerce Commission. (*The Midland Ry. Co. v. The Great Western Ry. Co.*, 2 Nev. & Mac. Ry. and Canal Cases, 88, 95, 96, 97, 98; *The Caledonia Ry. Co. v. The North Brit. Ry. Co.*, 3 ib., 56, 62; *Great North Ry. Co. of Ireland v. The Belfast Ry. Co.*, 3 ib., 411, 418; *Same v. Same*, 4 Brown & Mac. Ry. and Canal Cases, 159.)

13. *Cases in Federal circuit courts cited by counsel for the roads, holding that the Commission has no power to prescribe a rate.*

Since the promulgation of the decision of this court in the Social Circle Case, *circuit courts* have in four cases held that the Commission has no power to fix rates, all citing that decision as authority for so holding. Those cases are *Interstate Commerce Commission v. Northeastern R. R. Co. of So. Ca. et al.*, in circuit court at Charleston; *Same v. Louisville and Nashville R. R. Co.*, in circuit court at Nashville; *Same v. Lehigh Valley R. R. Co.*, in circuit court at New York; and *Same v. Cincinnati, New Orleans and Texas Pacific Ry. Co.*, in circuit court at Cincinnati.

In the first three cases there is *no discussion whatever of the question*, and the ruling is based solely on the authority of what it is claimed this court holds in the Social Circle Case.

As an example of the summary way in which this vital matter is disposed of, attention is called to the second of these cases (*Interstate Commerce Commission v. Louisville and Nashville Railroad Company*). In this case the court, in what might be termed a postscript, simply says:

"The Social Circle Case denies power in the Commission to fix rates and puts that question at rest."

If, as we have shown, the Social Circle Case does not deny, but expressly recognizes, power in the Commission in a given case, on "issue made and a finding of the facts," to fix a rate, then these cases, being based on a misconstruction of that case, are without any weight whatever as authority on this question.

The last-named case, *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railroad Company et al.*, decided by Judge Sage as judge of the circuit court at Cincinnati, is the only one in which there is any discussion of

the question of the power to fix rates. In it Judge Sage characterizes the right to fix a rate as "the right to dictate an indispensable and one of the most important terms of the contract between the shipper and the carrier," and expresses the opinion that "it can hardly be said to be within the recognized limits of the exercise of judicial right or power."

Whenever a contract relates to a matter regulated by law (and particularly a public or quasi public matter), the law is an implied term of such contract. The carrier in establishing rates does so subject to the provisions of the interstate-commerce law that those rates "shall be reasonable and just," and that the Interstate Commerce Commission shall enforce their reasonableness.

The carrier in fact dictates the rate to the shipper. It is strictly an *ex parte* proceeding. The shipper has no voice in it. He must accept the rate or not ship his goods. *He is under duress.* There is wanting in the transaction the essential feature of every contract, the "*aggregatio mentium.*"

Moreover, the prohibition in the Federal Constitution of laws "impairing the obligation of contracts" is upon the States and not upon Congress. (*Mitchell v. Clark*, 110 U. S., 643.)

XXIII.

THE PRESENT CASE STRONGER THAN THE SOCIAL CIRCLE CASE—NO CASE LIKE THE PRESENT OF ADMITTED DISCRIMINATIONS AGAINST ONE LOCALITY IN FAVOR OF ANOTHER UNDER THE SOUTHERN TRADE-CENTER SYSTEMS OF RATE MAKING HERETOFORE PRESENTED TO THIS COURT.

In conclusion, attention is called to certain essential distinctions between the present case and the Social Circle Case, which make the present case much stronger than the Social Circle Case.

1. Troy is shown and admitted to be a competitive point. Social Circle was a strictly local, noncompetitive point.

2. The complaint in this case was made by Troy merchants and business men, and *injury is shown to have resulted to Troy from the discriminations practiced.* There was no complaint in the Social Circle Case by or in behalf of any consignee at or resident of Social Circle, and no injury to Social Circle was proven.

The fact that Troy is a competitive point and Social Circle a local, noncompetitive point is a material distinction in favor of Troy, *at least from the railroad standpoint.*

In the Import Case stress was laid upon the facts that no "complaint was made by the city of New Orleans or by any person or organization there doing business;" that no "complaint was made by the localities to which the traffic was to be carried," and that it did not appear that any injury had been sustained by those localities; and it was held that the "*welfare of communities occupying localities where the goods are to be delivered*" and of "communities which are in the locality of the place of shipment" is to be considered as well as that of the carriers.

In the discriminations against Troy the welfare of the shipping communities as well as of the people of Troy is disregarded, and the interest of the carrier alone is sought to be subserved.

3. This is the first case before this court in which it is proven that the admitted discriminations are in pursuance of the Southern trade center system of *rate making*.

When the act to regulate commerce was enacted, the greater charge for the shorter than the longer haul over the same line existed only in the South under the Trade Center System of rate making.

Counsel for the roads states in his printed brief in the circuit

court, as heretofore quoted, that "trade centers in the North are so near together that it is impossible to charge higher rates to intermediate local stations than to competitive stations beyond."

The "long and short haul rule" of the fourth section of the act to regulate commerce was, therefore, aimed at the Southern trade-center system of *rate making*, of which this case presents a striking illustration.

Respectfully submitted,

L. A. SHAVER,
Of Counsel for Appellant.

○



c/o No 203.

Brief of Edmunds for Appellant

Office Supreme Court, U. S.
CLERK.

JAN 16 1897
JAMES H. MCKENNEY,
CLERK

Supreme Court of the United States.

Filed Jan. 16, 1897.

OCTOBER TERM, 1896. No. 203

The Interstate Commerce Commission,
Appellant,

vs.

The Alabama Midland Railway Company *et al.*

BRIEF BY MR. GEORGE F. EDMUNDS.



SUPREME COURT OF THE UNITED STATES.

The Interstate Commerce Commission, Appellant,

vs.

The Alabama Midland Railway Company et al.

October Term, 1896.

No. 563.

Brief by Mr. George F. Edmunds, on behalf of the appellant, on the question of the JURISDICTIONAL POWER of the Interstate Commerce Commission to make the order it did in this case, that the charge exacted by the carriers in respect of the particular goods in question should not exceed a certain named sum which the Commission, upon complaint, answers, issues, proofs, and hearing, found to be reasonable and just.

I. It is submitted with respectful confidence that *the interstate commerce law is in all its CIVIL aspects a REMEDIAL one.*

At the time of its passage the railway carriers were the absolute and irresponsible masters of all interstate commerce. The several States in trying to break up,

or at least to mitigate, the unjust tyranny of these great corporations and combinations that held the largest part of the intercourse of the people in their grasp (and which in many instances undertook to control political as well as commercial affairs), found themselves baffled, and practically defeated in their efforts by the national constitutional provision that only Congress could regulate interstate commerce. In this state of affairs, and to redress such enormous grievances, the Interstate Commerce Act was passed for the intended benefit of the whole body of the citizens of the Republic having a common grievance and a common interest in the vast commercial intercourse between all the States. This legislation was, therefore, in the very highest sense, and to the last degree, REMEDIAL.

II. Being thus remedial, the statute ought to be construed liberally to the attainment of the ends in view. Instead of being given the narrowest possible application and construction, it should, it is humbly submitted, be applied and construed by the judiciary in the largest latitude fairly consistent with its language. It ought not to be frittered away by the refinements of criticism, or made ineffectual because it does not possess all the inclusive and exclusive qualities of a plea in abatement, and may not be "certain to a certain intent in every particular." It is, perhaps, questionable taste for the Bar to cite authority

for this proposition, but it may be permitted to refer to a few of the vast number of the authorities on the subject. 2nd Pet., 627, *Wilkinson vs. Leland*; 7th Wall., 219, *Silver vs. Ladd*; 12th Pet., 102, *Beaston vs. Farmers' Bank*; 6th Pet., 29, *U. S. vs. Bank of North Carolina*; 18th Pet., 107, *Bank of U. S. vs. Lee*. Broom's Legal Maxims (fifth American edition from third London edition) [p. 80].

III. But the contention on the other side is that, while the Commission has power to decide what shall *not* be done, it has no power in the very same case to do complete justice by declaring what *shall be* done by the carriers in the given matter. We may well quote here the language of Broom's Legal Maxims: "Again, "in construing an Act of Parliament, it is a settled "rule of construction that cases out of the letter of "the statute, yet within the same mischief or cause of "the making, thereafter shall be within the remedy "thereby provided; and, accordingly, it is laid down "that for the sure and true interpretation of all statutes (be they penal or beneficial, restrictive or enlarging of the common law) four things must be "considered: (1st) What was the common law before "the making of the Act; (2d) What was the mischief "for which the common law did not provide; (3d) "What remedy has been appointed by the legislature "for such mischief; and (4th) The true reason of the "remedy. And then the duty of the judges is to put

"such a construction upon the statute as shall sup-
 "press the mischief and advance the remedy—to sup-
 "press the subtle inventions and evasions for continu-
 "ing the mischief *pro privato commodo*, and to add
 "force and life to the cure and remedy according
 "to the true intent of the makers of the Act, *pro bono*
 "*publico*. In expounding remedial laws, then, the
 "courts will extend the remedy so far as the words
 "will admit." It is submitted that the words of the
 statute in question do not require the application of
 the foregoing rules,—being too plain for their applica-
 tion. If they are not, then the rule should be applied.

IV. What, then, is the statute? At the risk of re-
 iteration, I quote the crucial parts of some of the sec-
 tions bearing on the subject of this brief:—

"SEC. 1. * * * All charges made for any
 "services rendered or to be rendered in the trans-
 "portation of passengers or property as aforesaid,
 "or in connection therewith, or for the receiving,
 "delivering, storage, or handling of such prop-
 "erty, *shall be reasonable and just*; and every un-
 "just and unreasonable charge for such service is
 "prohibited and declared to be unlawful."

"SEC. 2. That if any common carrier subject to
 "the provisions of this Act shall, directly or in-
 "directly, by any special rate, rebate, drawback,
 "or other device, charge, demand, collect, or re-

"ceive from any person or persons a greater or
 "less compensation for any service rendered or
 "to be rendered in the transportation of pas-
 "sengers or property, subject to the provisions
 "of this Act, than it charges, demands, collects, or
 "receives from any other person or persons for
 "doing for him or them a like and contempora-
 "neous service in the transportation of a like kind
 "of traffic, and under substantially similar circum-
 "stances and conditions, such common carrier
 "shall be deemed guilty of unjust discrimination,
 "which is hereby prohibited and declared to be
 "unlawful."

"SEC. 3. That it shall be unlawful for any com-
 "mon carrier subject to the provisions of this Act
 "to make or give any undue or unreasonable
 "preference or advantage to any particular per-
 "son, company, firm, corporation, or locality, or
 "any particular description of traffic, in any re-
 "spect whatsoever, or to subject any particular
 "person, company, firm, corporation, or locality,
 "or any particular description of traffic to any
 "undue or unreasonable prejudice or disadvan-
 "tage in any respect whatsoever."

"SEC. 4. That it shall be unlawful for any com-
 "mon carrier subject to the provisions of this Act
 "to charge or receive any greater compensation
 "in the aggregate for the transportation of pas-
 "sengers or of like kind of property under sub-
 "stantially similar circumstances and conditions
 "for a shorter than a longer distance over the
 "same line in the same direction," &c.

SECS. 6 and 7 control the regulation of through rates, and provide against devices to break up continuous transportation, and for a general control of the Commission over that subject.

SEC. 9 provides that persons claiming to be damaged in respect of the matters embraced in the Acts may complain to the Commission.

SEC. 11 establishes the Commission, and secures to it a non-partisan character and a freedom from private interest or bias.

SEC. 12 (as amended): "That the Commission
 "hereby created shall have authority to inquire
 "into the management of the business of all com-
 "mon carriers subject the provisions of this Act,
 "and shall keep itself informed as to the manner
 "and method in which the same is conducted;
 "and shall have the right to obtain from such
 "common carriers full and complete information
 "necessary to enable the Commission to perform
 "the duties and carry out the objects for which it
 "was created; and THE COMMISSION IS HEREBY
 "AUTHORIZED AND REQUIRED TO EXECUTE AND EN-
 "FORCE THE PROVISIONS OF THIS ACT;" * * *
 "and for the purposes of this Act the Commis-
 "sion shall have power to require by subpoena
 "the attendance and testimony of witnesses, and
 "the production of all books, papers, tariffs, con-
 "tracts, agreements, and documents relating to
 "any matter under investigation," * * *

SEC. 13. "That any person, firm, corporation,
 "or association, or any mercantile, agricultural,

"or manufacturing society, or any body politic or
 "municipal organization complaining of *anything*
 "*done or omitted to be done* by any common carrier
 "subject to the provisions of this Act in contra-
 "vention to the provisions thereof, may apply to
 "said Commission by petition, which shall briefly
 "state the facts; whereupon a statement of the
 "charges thus made shall be forwarded by the
 "Commission to such common carrier, who shall
 "be called upon to *satisfy* the complaint, or to
 "answer the same in writing within a reasonable
 "time, to be specified by the Commission. If
 "such common carrier, within the time specified,
 "shall make *reparation* for the injury alleged
 "to have been done, said carrier shall be relieved
 "of liability to the complainant only for the
 "particular violation of law thus complained of.
 "If such carrier shall not satisfy the complaint
 "within the time specified, or there shall appear
 "to be any reasonable ground for investigating
 "said complaint, it shall be the duty of the Com-
 "mission to investigate the matters complained
 "of in such manner and by such means as it shall
 "deem proper." * * *

SEC. 14. "That whenever an investigation shall
 "be made by said Commission, it shall be its duty
 "to make a report in writing in respect thereto,
 "which shall include the findings of fact upon
 "which the conclusions of the Commission are
 "based, together with its recommendation as to
 "what *reparation*, if any, should be made by the
 "common carrier to any party or parties who
 "may be found to have been injured; and such

“findings so made shall thereafter, in all judicial
 “proceedings, be deemed *prima facie* evidence as
 “to each and every fact found.” * * *

SEC. 15. “That if in any case in which an in-
 “vestigation shall be made by said Commission it
 “shall be made to appear to the satisfaction of the
 “Commission, either by the testimony of wit-
 “nesses or other evidence, that anything has been
 “*done* or *omitted to be done* in violation of the pro-
 “visions of this Act, or of any law cognizable by
 “said Commission, by any common carrier, or
 “that any injury or damage has been sustained
 “by the party or parties complaining, or by other
 “parties aggrieved in consequence of any such
 “violation, it shall be the duty of the Commission
 “to forthwith cause a copy of its report in respect
 “thereto to be delivered to such common carrier,
 “together with a notice to said common carrier to
 “*cease and desist from such violation*, or to make
 “*reparation* for the injury so found to have been
 “done, or *both*.” * * *

SEC. 16. “That whenever any common carrier
 “as defined in and subject to the provisions of this
 “Act, shall violate, or refuse or neglect to obey or
 “perform any lawful order or requirement of the
 “Commission created by this Act,” * * * “it
 “shall be lawful for the Commission, or for any
 “company or person interested in such order or
 “requirement, to apply in a summary way, by peti-
 “tion to the Circuit Court of the United States,
 “*sitting in equity*,” * * * “alleging such *vio-*
 “*lation* or *disobedience*, as the case may be; and

"the court shall have power to hear and deter-
 mine the matter, on such short notice to the
 common carrier complained of as the court shall
 deem reasonable ;" * * * "and said court
 shall proceed to hear and determine the *matter*
 "speedily as a *court of equity*" * * * "*in*
 "*such manner as to do justice in the premises ;*
 "and to this end such court shall have power, if
 "it think fit, to direct and prosecute in such mode,
 "and by such persons as it may appoint, all
 "such inquiries as the court may think needful
 "to enable it to form a *just judgment* in the
 "*matter* of such petition." * * *

These sections, by general, comprehensive and specific language (only short, possibly, of the inclusive and exclusive strictness and fullness required in pleas in abatement at common law), place within the jurisdictional power and duty of the Interstate Commerce Commission the investigation, hearing, and determination of *all questions* of dispute between the public and its component citizens and localities and the carriers. There is no limitation of the clear phrases of these various sections. The duty of the carrier is set forth in *all its aspects*, both of *affirmative duty* and of *prohibition*. The first section requires that "*all charges shall be reasonable and just.*" The second section prohibits special personal favoritism by secret devices. The third section prohibits preferences between persons or localities and kinds of traffic. The fourth section prohibits charging more

for a shorter than for a longer distance. The twelfth section provides that the Commission shall have authority to "inquire into the management of the "business of all common carriers," and that "the "Commission is hereby authorized and required to execute and enforce the provisions of this Act." There is no part of it that the statute does not *expressly* require the Commission to cause to be *completely* executed. The method of this execution is pointed out by the prescribed modes of procedure provided for in sections 13, 14, 15, and 16. And all this to be done on due application, under due procedure of notice, evidence, and hearing of all the parties. How, then, can it be said by the most hypercritical refiner that the Commission has no jurisdiction to decide, for instance, what *is* "reasonable and just" as provided in section 1? Has the Commission only the power to repeat the words of the statute, and say to the carrier proved to be guilty of extortion, "You must desist from extortion, and be reasonable and just?" Would not that be a palpable mockery of either administrative or judicial justice?

If the statute had contained only the first and twelfth sections with the procedure sections, could this court doubt the *power* of the Commission to decide the matter, and require the very conduct on the part of the carrier that the Commission had found to be "reasonable and just"? To hold otherwise would be to ignore and flout the plainest possible use of

language, if the statute be within the competence of Congress to pass.

But the rightful power of Congress to enact the law is not disputed. That the legislative department of any Government, State or national, has power to regulate the conduct of any full or *quasi* public business, is too obvious for discussion. State legislatures, in respect of their internal commerce and polity, possess, and have always exercised, the power of controlling all such business through agents (by whatever names they may be called), to whom is deputed the execution of the sovereign will according to the principles and rules laid down by the legislative power. The innumerable instances of this need not be cited. Indeed, government could not be, and it never has been, carried on in any other way.

Again: section 2 prohibits the unjust discrimination between persons, *i. e.*, between the traffic that citizens may be engaged in, or between citizens engaged in the same traffic. The Commission is, by the proper methods of procedure, to "*enforce*" this provision. Is the power of the Commission exhausted in saying to the discriminating carrier, "You shall not discriminate," and stop there? Must it not say, if it does its duty in enforcing the Act and redressing the grievances found to exist, that it will enforce the law by deciding what the *nature and degree* of the discrimination is, and by requiring that such degree of discrimination shall be effaced altogether by affirmative conduct of

equality, or by a charge of no more than the ascertained rightful sum, to the parties aggrieved?

Without referring in detail to the other provisions of the statute above quoted, it is safe to say that the plain purpose and clear, comprehensive language of the Act, show that the *whole* and *all* of the duties and obligations of the carrier to its customers and toward localities, &c., are to be enforced by the Commission; not a part of them, not a half of any of them, but all and every part of all of them. It is like algebra, in which neither side of the equation can possibly be considered or worked without the other. A complaint may be filed before the Commission (as in this case) alleging that the carrier ought not to charge for a described service more than the just and reasonable sum of fifty cents the hundred pounds, while, in fact, it is exacting one dollar the hundred pounds. Suppose the carrier appears and confesses that fifty cents per hundred is a reasonable and just price and that it does exact one dollar, but insists that the Commission has no jurisdiction to require the confessed reasonable charge to be made, and that it only has jurisdiction to require the cessation of the one dollar exaction, thus leaving the carrier to continue to plunder its customers of forty-nine cents per hundred with absolute impunity, as far as the Commission is concerned, until a new complaint shall have been instituted and the forty-nine cent charge again declared to be unreasonable. That this is shocking to all our *natural* sense of justice no one can dispute. Why, then, should the broad,

comprehensive, and specific language of the statute be "cabined, cribbed, confined" to produce such a state of the law? The citation from *Broom* may be well remembered in this connection.

The statute certainly requires the carrier to *refrain from exacting more than a reasonable price* (section 1); to refrain from drawbacks, rebates, &c., and all other unjust discriminations (section 2); to refrain from giving preferences or unequal advantages to persons or localities (section 3); to refrain from exacting more for a short than for a long haul (section 4); to refrain from all devices to break up continuous passage from road to road (section 7). I repeat in this connection that section 12 provides that the Commission shall have authority to "inquire into the management of the business," &c., and to obtain "full and complete information necessary to perform the duties and carry out the objects for which it was created." And I repeat the inquiry, what were the duties and objects for which it was created? The same section answers the question in terms so clear that neither cavil nor sophistry can confuse or obscure them.

V. But it is said that the Commission is not a judicial body, and cannot exercise *judicial powers*. Granted; in the strict sense of the terms; but, in every civilized country, administrative officers have always lawfully exercised many powers in every department of government which are in their nature judicial; for every

power which involves the exercise of judgment, opinion, and decision is of that nature. Such are the powers exercised by the Secretary of the Interior as to many land questions; the Secretary of the Treasury and some of his subordinates, as to customs, &c.; the various Commissions that have existed from time to time for nearly a century to settle land claims; and many others.

That Congress had the power to establish interstate "rates" in the largest sense of the word cannot be doubted. And that it had the power to establish a Commission to do the same thing is, it is submitted, equally clear. It is assumed, for the purpose of this case, that it did neither in the sense to which I am now referring. It adopted a policy short of this, and provided clear descriptions and requirements concerning the duties of the carriers in *all the aspects* that touch their conduct toward their patrons and toward the localities and sections of the country; and established the Commission to execute and enforce *all these provisions*—not a part of them, and not a part of any one of them; not negatively merely, but affirmatively and fully, to the end that *real conformity* by the carrier to the requirements of the Act should be obtained, and as the Act declares, obtained speedily, by procedure formal and ceremonious, in which all parties in interest were to be heard; and it provided for a decision of the particular question and the particular grievance thus brought to the attention of the Commission and examined by it; and in case of refusal to obey, the Act

provided for a suit to be brought in a judicial court of "equity," which court is required "to hear and determine "the *matter speedily as a court of equity*," with all that the phrase implies. The Commission is to inquire into "*anything done or omitted to be done*" by any common carrier subject to the provisions of the Act in contravention to the provisions thereof; and it authorized the Commission to require the carrier to "satisfy the complaint," or answer; and then, after hearing, to require the carrier "to cease and desist from such *violation*, or "to make *reparation*, or *both*." How can this be done short of a decision upon the *whole* matter? To again illustrate, let it be supposed that the sole complaint was that the carrier was exacting double what was just and reasonable for a particular service, and that this, on due notice to both sides, was found to be true. This would be a palpable violation of the Act. But the Commission is authorized to require the carrier to cease and desist from doing that very wrong. Does the carrier do so unless and until he reduces his exaction to the true point of justice and reason? To hold otherwise it would be, it is submitted, trifling both with grammar and common justice. If the statute had conferred the very same power, and in the very same words, upon a court of equity instead of the Commission, could the power of the court to redress the whole grievance be doubted? But the admitted power of the Commission to command the desistance from a charge of one hundred cents per hundred pounds is no less "judicial" than a requirement not to charge

more than the sum found to be reasonable and just. And the two things are precisely the same in principle and legal effect, and are inseparable.

On the subject of "*reparation*" provided for in section 3, I observe again that this section is to be enforced by the Commission. How is this *possibly* to be done, otherwise than by commanding *action* by the carriers suited to the nature of the case, so as to obliterate the whole undue preference, &c., and how possibly otherwise can reparation be made to a locality? Reparation means "restoration" of the right. No *such* exercise of the power by the Commission is either "fixing rates" or prejudging a matter, as referred to by Mr. Justice Shiras in the Social Circle case.

VI. The words "lawful order" mean an order the Commission has *jurisdiction* to make. An order may be lawful and at the same time erroneous, so that if the Commission made an order in a matter over which they had jurisdiction, which was merely an error of judgment as to precisely the degree of reparation, for instance, the carrier ought to make, the order would still be lawful. In such a case the court is to "hear" and determine the *matter*," that is, the whole subject, "as a court of equity, * * * in such manner as to "do *justice* in the *premises*;" that is, complete justice in the whole premises. "Premises" is not merely the particular order that the Commission has made, but

it is the whole subject that had been duly brought before the Commission and on due notice and hearing had been acted upon. It is that duty which rested with the Circuit Court and is now imposed upon this court.

All the preceding action described is not "fixing" "rates" in the sense that State commissioners of railways are authorized by their legislatures to establish general rates for all classes and for all railways, as is contended for by the defendants. We make no such claim. The action of the Commission, and the action of this court, on what is really an appeal from and a review of its judgment, is the trial and determination of a particular case, and determining for that particular case what the conduct of the carrier shall be in respect of the particular dispute involved in it. It is the exertion of no general power to prejudge or to fix rates, nor is it the exertion of any power to fix rates in general. If this distinction be observed, there is no difficulty whatever. This is precisely in accord with what Mr. Justice Shiras said. After stating what had happened before the Commission and stating that in the Circuit Court evidence was introduced which had not been laid before the Commission, showing that the rate to Birmingham had been forced down by the coming in of a new competitive road, and that the Circuit Court had thereupon found that the evidence was sufficient to overcome the findings of the Commission, and that the rate complained of was not unreasonable; and after stating that the Circuit Court of Appeals had

adopted the views of the Circuit Court in respect of the reasonableness of the rate from Cincinnati to Atlanta, and "as both courts found the existing rate to " have been reasonable, we do not feel disposed to re-
 " view their finding on the matter of fact," he then condemned the conduct of the carriers in lying by. He then says, "Whether Congress intended to confer
 " upon the Interstate Commerce Commission the
 " power to itself fix rates was mooted in the courts be-
 " low and is discussed in the briefs of counsel." He says, "We do not find any provision in the Act which
 " expressly or by necessary implication confers such
 " power," and so forth. He then says, "The reason-
 " ableness of the rate in a *given case depends on facts,*
 " *and the function of the Commission is to consider these*
 " *facts and give them the proper weight.* If the Com-
 " mission, *instead* of withholding judgment in such a
 " matter *until an issue shall be made and the facts found,*
 " itself fix a rate, *that* rate is prejudged by the Com-
 " mission to be reasonable." In this proposition we
 entirely concur; but in this case the identical question
was raised by the petitions, an issue *was made*, evi-
 dence *was taken* on both sides, and the *facts found*, so
 that the sum fixed as reasonable by the Commission
was not prejudged. And he adds that "Subject to the
 " two leading prohibitions that their charges shall not be
 " unjust and unreasonable, and that they shall not un-
 " justly discriminate so as to give undue preference or
 " advantage, or subject to undue prejudice or disadvan-
 " tage persons or traffic similarly circumstanced, the

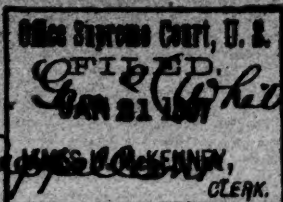
" Act to Regulate Commerce leaves common carriers " as they were at common law." Here again it will be seen that reasonableness and unreasonableness, justice and injustice, preference, advantage, prejudice, disadvantage are the very subjects that he says are within the competence of the Commission to determine. If the Supreme Court had been of opinion that the action of the Commission in its decision in regard to the Atlanta rate was beyond its jurisdictional power, they would have so said, and affirmed the judgment on that ground ; but in distinct terms they affirm the judgment of the Circuit Court and the Court of Appeals upon the express ground that the Commission was in error in its finding of fact.

VII. The judiciary of the United States have recently been able, without the special aid of any Act of Congress, to preserve the interstate carriers from being despoiled by unlawful interference with their operations. It is to be hoped for the good name of Congress and for the public welfare and contentment that the same judiciary will find that Congress has adequately provided for protecting the people from being despoiled by the carriers, and that it is within the clear competence of the Commission and the courts to make these provisions effectual.

GEO. F. EDMUNDS.

1st Div. 203.

Reply Br. of City
for Appellant



Filed Jan. 21, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION,
appellant,

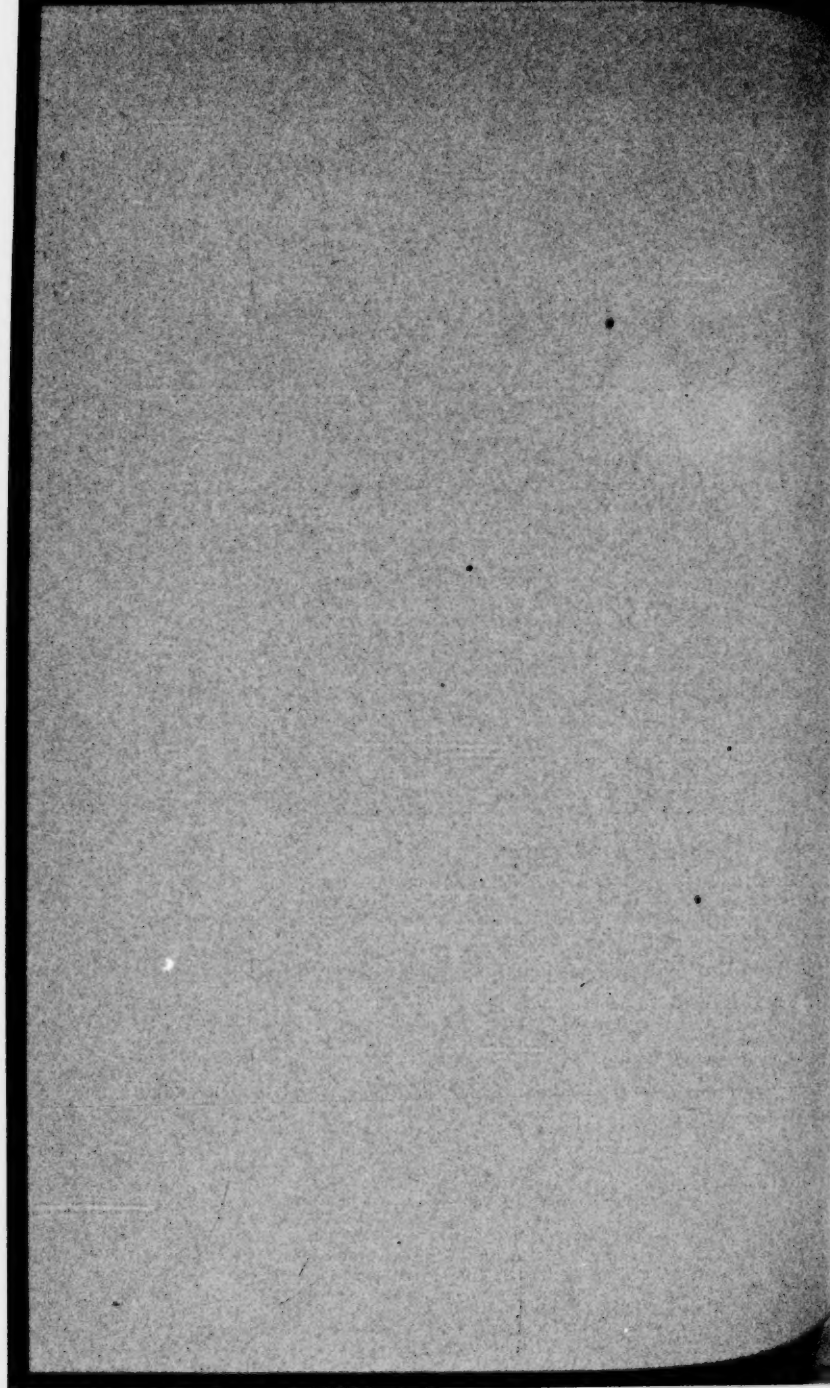
v.

THE ALABAMA MIDLAND RAILWAY Com-
pany, The Central Railroad and Banking
Company of Georgia, et al.

No. 563.

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

REPLY BRIEF FOR APPELLANT.



In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION, appellant, <i>v.</i> THE ALABAMA MIDLAND RAILWAY COM- pany, The Central Railroad and Banking Company of Georgia, et al.	} No. 563.
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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

REPLY BRIEF FOR APPELLANT.

This brief is not intended to argue fully all the questions arising upon this record, but, in replying to Mr. Baxter's argument to give a *résumé* of certain points which seem to the undersigned to dispose of the case, and to set forth the evidence of the most important witnesses bearing upon these points.

The opinion of Mr. Commissioner Clements states very clearly and fully the grounds upon which the Interstate Commerce Commission proceeded in making the

important order now brought before this court for review. The opinion is unfortunately printed in the record in very fine type and in double column, so that it is somewhat difficult to read. It will be found better printed



GULF OF MEXICO.

Traced from Travelers' Official Guide.

(Omitting unimportant branch lines. Eufaula should be on River).
in the official reports. (*Board of Trade of Troy v. Alabama Midland R. R. Co. et al.*, 6 Int. C. C., 1.)

The opinions of Judge Bruce and of the Circuit Court of Appeals are very meagre. Their statement of the

controversy seems to the undersigned somewhat confusing. They set forth the questions as raised before the Interstate Commerce Commission by the petition of the Board of Trade of Troy. But that petition, if the undersigned is correctly advised, should have cut no figure in the case after it came in court. The Interstate Commerce Commission were not obliged to treat the petition as if it were a declaration of common law, a bill in equity, or a libel in admiralty. They had the right to investigate into the whole subject matter and inquire whether any injury or damage has been sustained, not merely by the complainants, but by other parties aggrieved (§ 15). There is no claim that the Commission have in this instance gone beyond the bounds of the subject matter of the petition. They have, however, adopted their own language, very carefully chosen, in drawing their mandate; and have changed the order and somewhat modified the substance of the petitioners' prayers for relief.

THE COMMISSION'S ORDER.

This will be found at pp. 67-9 of the record.

It prohibits the two competing railroads at Troy (the Alabama Midland and the Central of Georgia) and the other railroads and steamboat lines which unite with them in making through rates to Troy from charging, etc., "any greater compensation in the aggregate for services rendered in such transportation than is specified as follows:"

1. On class goods shipped from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio, to Troy aforesaid, no higher rate of charge than is now charged

and collected on such shipments to Columbus, Ga., and Eufaula, Ala.

2. On shipments of cotton from Troy aforesaid through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per hundred pounds.

3. On shipments of cotton from Troy aforesaid for export through the Atlantic seaports, to wit, Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid.

4. On shipments of cotton from Troy aforesaid to the ports of Brunswick, Savannah, or Charleston no higher rate of charge than is charged and collected on such shipments from Montgomery aforesaid through Troy to said ports.

5. On shipments of class goods from New York, Baltimore, or other northeastern points to Troy aforesaid no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

6. On shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

INTERSTATE COMMERCE ACT.

The first two paragraphs of the order are based upon § 3.

The last four paragraphs are mainly based upon § 4. They are based upon § 4 so far as traffic over the Alabama Midland line is concerned. As respects traffic over the Central of Georgia, they are under § 3, since shipments

over that line to Montgomery do not pass through Troy. The bearing of these paragraphs upon shipments by the Central of Georgia will not be discussed in this brief, because it is not a question of the slightest practical importance; for if this court shall direct the orders of the Interstate Commerce Commission to be obeyed by the Alabama Midland, and the rates to and from Troy thereby reduced, the Central of Georgia will doubtless reduce its rates likewise rather than give up its Troy business.

The sections, so far as material, are as follows:

§ 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * *

§ 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, *under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance;*
* * *

The proviso to § 4 is immaterial here, because no application has been made under it to the Interstate Commerce Commission; and because, had such an application

been made, the decision of the Commission would have been unreviewable. It is as follows:

Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, *in special cases*, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of persons or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

The powers of the circuit court were derived from § 16, which provides that upon summary application and notice—

Said court shall proceed to hear and determine the matter speedily as a court of equity, * * * in such manner as to do justice in the premises.

that it may prosecute—

All such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of the Commission shall be *prima facie* evidence of the matters therein stated.

The court is required to grant an injunction or other proper process if it appear—

That the *lawful* order or requirement of said Commission drawn in question has been violated or disobeyed.

It will be noticed that there is no general authority to take evidence in the circuit court; that the custom of taking evidence has sprung from the court's authority

to make needful inquiries; and that these inquiries relate to the question whether the Commission's order was lawful.

COMPARISON OF §§ 2, 3 AND 4.

The Circuit Court of Appeals quote at length from the opinion of the Circuit Court in the Texas Pacific case. That case concerns only §§ 2 and 3. The former has but an indirect bearing upon this case, in so far as it contains the same phrase "transportation * * * under substantially similar circumstances and conditions."

§ 2 prohibits certain acts of discrimination between individual shippers at the same locality. What these prohibited acts of discrimination are is a matter easily discoverable by comparison with certain provisions of the sixth section, with the authorities upon the English "Equality Clause" from which this provision was taken, and with the Senate report which introduced it to legislative consideration (see brief for defendant in error in the Wight case, No. 494 of this term). It is not left to the Commission, court or jury to decide whether or not these prohibited acts of discrimination are "unjust." If any one of them is committed, the "common carrier shall be deemed guilty of unjust discrimination." Whether any other form of unjust discrimination is prohibited by this section may be regarded as an open question. As to the matters specified, it has a rigid operation, and leaves nothing to the discretion of the tribunals by which it is to be administered.

§ 3, on the other hand, provides no rigid or specific rule, but is directed against all advantages which are

"undue or unreasonable." It applies between either individual or localities. § 4 again provides a rigid rule, applicable as between different localities situated upon the same line of commerce, giving no discretion to court or jury. It differs, however, from § 2 in that it contains a proviso allowing the Interstate Commerce Commission, at its discretion, to dispense with the requirements of the section "in special cases." It has been a much mooted question whether competition is to be treated as one of the "circumstances and conditions" mentioned in the long and short haul clause, or as one of the "special cases" mentioned in the proviso. This is discussed at length by the undersigned in the *Ionia* case (No. 539 of this term).

FUNCTIONS OF COMMISSION AND COURT UNDER § 3.

(1) *Questions to be examined by the Commission.*

Two questions are submitted to the Commission by this section: first, whether a preference has been given; and, second, whether it is undue or unreasonable. The second of these questions is addressed largely to the discretion of the Commission.

(2) *Form of order by the Commission. Shall it fix a maximum rate?*

Sometimes the Commission finds, not only that a preference has been granted to one locality over another upon insufficient grounds, but that the two localities ought in fairness to have the same freight rate. In this case the order may simply state that the rate to one locality shall be no higher than that to the other. Sometimes, however, while an unreasonable preference has been given to

one locality, it is fairly entitled to some degree of preference. The unfairness is not in the existence of the preference, but in its extent. In such a case it is necessary for the Commission to make some order; but an order in the form above given would not be proper.

In the case last mentioned it is necessary for the Commission to fix a *maximum* rate. The order must read either "that the freight rate to locality A shall not exceed x cents" or "that the freight rate to locality A shall not be more than x cents below the corresponding rate to locality B."

It would be absurd for the Interstate Commerce Commission to make an order directing the railroad company to desist from an undue and unreasonable preference, without indicating within what limits a preference would be due and reasonable. Presumably not only the fact of unfairness, but the degree of unfairness, has been in issue and has been heard and decided by the Commission.

In the present case, for instance, the rate of 68 cents from Troy to New Orleans is held to be unduly and unreasonably disadvantageous as compared with the rate of 50 cents from Columbus to New Orleans. Suppose that the Commission considered that a preference of 3 cents to Columbus would be due and reasonable. Could it not say so? Would it be obliged to rest with saying that the rate of 68 cents was undue and unreasonable, leaving the railroad company to experiment by a succession of slight reductions in order to ascertain the extent of the Commission's liberality? Is the railroad to reduce its rate a half cent at a time, requiring the Commission on each occasion to give a new notice, and, after a new hearing

"within a reasonable time," make a new order and give the railroad company 30 days to comply with it? Would the situation ever remain the same at the conclusion of the term of years required by such a process? Would the Interstate Commerce Law so construed be anything but a delusion and a mockery?

The power of the Commission in passing upon a controversy properly submitted to it to fix maximum rates is so clearly involved in the law, that we should not have alluded to it, but for the construction which has been put upon certain *dicta* in the Social Circle case, 162 U. S., at pp. 196-7. This point was fully and ably argued by Mr. Cooper in the Florida orange case, No. 141 of this term, is fully treated in the brief submitted upon this argument by Mr. Shaver, and is the subject of a special brief filed by Mr. Edmunds. Hence it is not here further discussed.

(3) *Extent of court's power to review the Commission.*

This has been discussed by the undersigned in his brief in the Ionia case, No. 539 of this term, to which reference is made (pp. 59-67). It is respectfully submitted that the proceedings of the railroad companies during this controversy have been a travesty of justice. They introduced no testimony whatever upon the questions between Troy and Columbus and Eufaula, and only a single affidavit upon the question between Troy and Montgomery. They waited until the issues were made up in the Circuit Court, and then undertook to try the case *de novo* upon new evidence, under the court's general power to make needful inquiries into the lawfulness of the Commissioner's order. Thus Judge Bruce, in sustaining their contentions, was able to say (p. 124): "The

case made here is not the case as it was made before the Commission." Such procedure was censured by this court in the *Social Circle* case, 162 U. S., at p. 196. Mere censure, however, will never rectify the wrong. It is maintained in the *Ionia* brief above referred to that the railroad company should be held estopped in such a case, and should be sent back to retry its case before the Commission, obeying the Commission's order in the *interim*; and it is further maintained that the court has no power whatever to review the Commission's judgment upon a controversy over which the Commission has full jurisdiction.

For the court's duty under the Interstate Commerce Act is not merely to enforce orders of the Commission which are not erroneous, or which would not be reversed upon appeal, were the Commission a *nisi prius* judge and were the Circuit Court an appellate tribunal. The Circuit Court is bound to enforce the order of the Commission whenever "it be made to appear to such court * * * that the *lawful order or requirement* of said Commission drawn in question has been violated or disobeyed." The court is only authorized to inquire whether or not the Commission has misconstrued the statute and thereby exceeded its power. There is no general jurisdiction to take evidence upon the merits of the original controversy. The "inquiries" which the court thinks needful must be directed to some *quasi*-jurisdictional point. The provision for these "inquiries" is intended to guard against any unintentional overstepping of its powers by the Commission, due to mistakes of fact; and to prevent the application of the general rule as to

quasi-jurisdictional issues, that the finding of the inferior tribunal is "as conclusively presumed to be correct as its finding with respect to any other matter in issue between the parties." (*Noble v. Union River Logging R. R. Co.*, 147 U. S., 165, 173.)

Questions under the third section are generally questions of fact and not of power, and hence unreviewable. (Compare *Diphwys Slate Co. v. Festiniog Ry. Co.*, 2 Nev. & Maen., 73, 81.)

(4) *Power of the court to modify the Commission's order.*

Suppose that the Commission should hold a preference of one locality over another to be altogether undue and unreasonable, so that the two localities ought to have the same freight rates. Suppose that the court should differ in opinion with the Commission upon this point, but should differ only as to the extent of unfairness. Suppose that the Commission, as in the present case, considers that Columbus should not be preferred at all above Troy; so that, Columbus having a 50 cent rate, Troy's rate should be reduced from 68 cents to 50 cents. Suppose that the court, however, should think that, while the preference to Columbus is undue and unreasonable in amount, it is nevertheless entitled to some preference; and that the Troy rate, therefore, should be reduced to 53 cents. We have already argued under the last sub-heading that the court would have no jurisdiction to interfere. Assuming, however, that it has the jurisdiction to interfere, then it should not nullify the Commission's order entirely, but should modify it by making the

reduction to Troy only 15 cents instead of 18; and, as so modified, should enforce it.

This power of modification arises from the provision that the court "shall proceed to hear and determine the matters speedily as a court of equity * * * in such manner as to do justice in the premises" (§ 16).

The Texas Pacific case (162 U. S., at pp. 236-9) does not militate against this contention. That case was quite peculiar. It turned upon the question whether ocean competition from Liverpool around Cape Horn to San Francisco was an element which could be taken into consideration in fixing freight rates on through traffic, part water and part rail, from Liverpool *via* New Orleans to San Francisco. The Commission and the lower court had held that the competition was not to be considered at all, and therefore had not discussed the question whether the local rates from New Orleans to San Francisco were reasonable, either in themselves under § 1, or in comparison with the through rates under § 3. This court held that such a question could not be discussed for the first time in the Circuit Court of Appeals.

In the present, as in most cases under § 3, the Commission has fully considered the element of competition in reaching its conclusions; and (assuming that the court has any jurisdiction at all to review its decision in this particular) it would seem clear that the order of the Commission, if partly justified by the facts in the case, should be enforced to the extent that it is justified, and limited in so far as it is not justified.

FUNCTIONS OF COMMISSION AND COURT UNDER § 4.

This section is discussed at length by the undersigned in the Ionia brief, No. 539 of this term (pp. 41-6, 50-1, 67-9), to which he begs leave to refer.

It may be enough to recapitulate the following points there made: That differences in size and tonnage of different localities, and differences in extent of competition between them, do not constitute dissimilarities of "circumstances and conditions" within the meaning of the long and short haul clause. That, when they merit relief from its operation, they constitute "special cases" within the proviso. That the court therefore has no jurisdiction, upon a bill to enforce the orders of the Commission, to consider any of these elements. That the only body which has the power to relieve railroad companies from the operation of the long and short haul clause on account of the existence of competition, or any other similar element which would make its application unfair, is the Commission itself, which is bound to consider the question upon application by the railroad company, but whose decision is discretionary and unreviewable.

Our reliance is upon the statute itself, in its wording, context, and history, and upon the actual decision made by this court in the Social Circle case. The learned counsel for the appellees relies upon certain *dicta* of the court in that case and the Texas Pacific case, which, as he construes them, contravene both his argument in those cases, and as we believe, the statute as well.

MR. BAXTER'S THEORY OF §§ 2, 3 AND 4.

§ 2. Among his extracts from opinions of this court upon the section, Mr. Baxter fails to quote its statement that the provision is "modelled upon" the English "equality clause" of 1845. (162 U. S. at p. 222.) This is undoubtedly true. The language was much improved by Congress, but the thing prohibited remains the same, unless the omission of the bracketed words in the English act import a change: namely, an overcharge—

ENGLISH, 1845.

in respect of all passengers, and of all goods and carriages of the same description, and conveyed or propelled by a like carriage or engine, [passing only over the same portion of the line of railway] *under the same circumstances.*

AMERICAN, 1887.

for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions.*

The English equality clause of 1844 relating to the Great Western railway was construed to have the same meaning, though it contained the words "like" circumstances and "like" description. (9 Exch., at p. 561; L. R. 4 H. L., 239.) The words *substantially similar circumstances* are equivalent thereto (3 App. Cas., 1038); and nobody has ever suggested that anything was added by the tautological "and conditions." Congress, when it adopts English legislation, presumably adopts the English judicial construction also. (145 U. S. at p. 284.) This presumption is a natural and strong one, and has been applied to many other borrowed statutes as well as this one.

Mr. Baxter correctly states that the English equality clause did not apply "unless the same class of goods were shipped between the same points of departure and arrival,"—"passing over no other part of the line." That is true; and the same rule was applied by this court in the Texas Pacific case as between through and local traffic, holding that through traffic might be carried from A to B *en route* from C at a lower rate than local traffic between A and B. Whether the American equality clause is broader in its application by reason of dropping the bracketed words, (thus equalizing rates from A to B with rates from B to C, when conditions remain the same), or whether it dropped those words merely because they were surplusage (as the undersigned believes) is immaterial here. Whichever way the point is decided, it can not make "substantially similar" a narrower phrase than "same," or establish any distinction between a condition and a circumstance.

Mr. Baxter fails to bring clearly out the fact that there may be competition between two railroads, between the same cities; that these railroads may be differently situated with respect to an individual shipper; that their competition for that shipper's patronage is precisely like the competition for the patronage of a town or city; that his strategic position may vary as widely from the average as does that of the most favored basing point; and that if the "circumstances" of the statute referred to the strategic position of the shipper, as well as to matters affecting the cost or risk of carrying his goods, the section would permit great variation in rates between shippers over the same line, between the same points.

Mr. Baxter is correct in stating that the famous cases of Sutton, Evershed, and Denaby (which are set forth in full in the Wight brief) are not directly in point in contests between different localities; but they construe the meaning of "like circumstances" or "same circumstances" in the English equality clause (and thus, indirectly, of "substantially similar circumstances" in our clause) and settle that it does not refer to the personal importance or strategic position of the shipper, except so far as the cost or risk of carriage is thereby affected—that it has no reference to questions of competition. The importance of these cases is easily seen when the same phraseology is discovered in the fourth section of our statute. He apparently does not fall into the error of supposing the Evershed case, in this aspect, to be overruled.

It is when he comes to deal with the legislative history of our equality clause that Mr. Baxter falls into the gravest error. He claims that the phrase under discussion (though evidently adopted from the English statute, and left unchanged except to slightly strengthen the statutory prohibitions) was introduced by Senator Cullom's Committee to cover, "among others, the important conditions arising out of the competition of carrier with carrier." In the Wight brief (pp. 58-9) we showed, by Senator Cullom's own report upon the bill, that variations in rates to meet competition of carrier with carrier were the very things which his committee was most seeking to avoid. Doubtless they thought that an adoption and broadening of the English language, already

long since judicially interpreted, was the safest way to attain their end.

§ 3. There is so little to be said about the construction of the undue preference clause, that it would hardly be necessary to refer to it were it not that Mr. Baxter appears to think that the English cases upon its application, such as the famous case of the passengers from Motherwell to Edinburgh, are authorities upon the controversy between Montgomery and Troy. There is only one issue between these cities which depends upon the undue preference clause, and to that controversy the English cases have no analogy.

Nor have these cases, which Mr. Baxter so pictorially represents, any analogy to the controversies between Troy, Eufaula and Opelika. Since, however, he lays so much stress upon the Phipps case (Brief, pp. 80-2) we may venture to suggest that he advise his client to treat Troy, in comparison with Montgomery, as well as the Phipps' colliery was treated by the English railroad company. The Liverpool Corn Traders' Association case (pp. 82-4) would be analogous to the controversy over shipments of cotton to New Orleans had this controversy come before the court in the first instance, and had there been any controlling competition shown at Eufaula and Opelika. The case under the Colorado constitution on which so much reliance is placed (pp. 86-91) simply holds that, under a provision somewhat similar to the undue preference clause, a railroad is not required to form a through line with any other railroad unless it

pleases. The other American cases cited are also not analogous to either of the first two requirements of the order involved in the case at bar.

§ 4. Mr. Baxter's account of the legislative history of the long and short haul clause is principally notable from his discovery of the fact that Senator Harris, who suggested the insertion of the phrase in question, did it in order to adopt "*the language of the second section*" (p. 102), and as a substitute for certain language proposed by Senator Aldrich. Curiously enough, he fails to show what Senator Aldrich's proposition was, or its motive. If he had done so, he would have exposed the fact that there was no such motive expressed as to provide for cases of competition. The bill as it was then before the Senate is printed by Mr. Baxter at page 104 of his brief. It failed clearly to provide for freight classification and other differences essential to the carriage itself. It was this defect which the Senators were endeavoring to remedy. Mr. Aldrich said: "I should like to know how it is possible to say how much property or of what kind, and it is absolutely necessary to make the bill intelligible, that it shall be of like class and quantity of property transported under similar circumstances and conditions." (Congr. Record, May 12, 1886, p. 4400.) The case of competition was one of the "special cases" referred to in the proviso, and was thus covered already, before Senator Aldrich had made his criticism. No more careful course could have been taken, in order to avoid this criticism without destroying the value of the enactment, than

to adopt the phraseology of the second section with its long-settled interpretation.

The debates of Congress are not competent evidence, and, though favorable to our contention, we have therefore not relied upon them.

A most extraordinary misapplication is made, at page 108 of the brief, of Mr. Justice Jackson's reference to competitive conditions in the party rate case (43 Fed. Rep., at pp. 53-4). The brief is so drawn as to make it seem that this reference is made in connection with a discussion of "the second and third sections," and the quotation is so intertwined in the argument as to give it an apparent bearing, through the second section, upon the fourth. The sentence quoted by Mr. Baxter is contained in a paragraph discussing "the 'undue preference' branch of the English acts" (p. 53). It is preceded by the following words:

Our act to regulate commerce having adopted substantially sections 2 and 90 of the English railway traffic acts of 1854 and 1845, the settled construction which the English courts had given to their terms and provisions must be received as incorporated into our statute. *McDonald v. Harey*, 110 U. S., 619.

Mr. Justice Jackson, while he seems to have but partially read the English authorities under the equality clause, and while he used some broad language that has been made use of to obscure and overslaugh the provisions of the statute, nevertheless clearly indicates here that he recognizes competition as bearing only on the third section. The only authority quoted by him upon the equality clause (Mr. Justice Blackburn in the Sutton

case, L. R. 4 H. L. at pp. 238 et seq.) gives it a construction which excludes the element of competition.

Judge Cooley's interpretation of the fourth section in the Louisville & Nashville case is much in line with Mr. Baxter's contention, although Mr. Baxter is not satisfied to accept it. It was contrary to the general opinion of the bar at the time, and has been generally abandoned since. It is inconsistent and can not stand careful analysis, or comparison with other sections and with the English acts. It was formally disavowed by the counsel for the Commission, as well as by Mr. Baxter, in the Social Circle case. Its errors were doubtless due to the fact that the fourth section was considered mainly by itself, without sufficient comparison with the second section; to the fact that the English authorities are not examined; and, in fine, to the fact that the Commission were unaided by counsel, except for the railroad companies.

Judge Deady's discussion of the long and short haul clause, made about the same time, was under similar disadvantages.

Subsequent cases in lower courts have simply followed the lead of these early cases, and thus error and confusion have been piled up and the Interstate Commerce Law practically emasculated. The Commission itself has felt obliged to follow its erroneous precedent, until it should be overruled by the court.

Nowhere is its inconsistency more clearly demonstrated than by Mr. Baxter himself, at pages 114 et seq. He shows that it must be half wrong. His only error is as to the half which is wrong. This part of his brief

is adapted from that which he filed in the Social Circle case. He there took the same legal position which he takes now. He claimed that, if he was correct, the decree must be reversed. This was true; but the decree was affirmed.

That controversy was between Augusta and Social Circle in Georgia.

Augusta there, as Montgomery here, was the long haul. Social Circle is 119 miles short of Augusta—Troy only 52 miles short of Montgomery. Augusta is as large and important as Montgomery—Social Circle small and unimportant compared with Troy. Augusta has better water competition than Montgomery—Social Circle is without the rail competition which Troy enjoys. Social Circle was in every way worse placed than Troy; but the court held that there was no substantial dissimilarity in circumstance or condition. The case is very fully set forth in the brief of the undersigned in the Ionia case, No. 539 of this term, (pp. 88 et seq.)

STATEMENT OF FACTS.

As stated at the commencement of this brief, it is not the intention to make a complete *résumé* of the evidence, but instead to set forth quite fully the evidence of the most important witnesses upon certain points which, as the undersigned believes, are sufficient to dispose of the case.

In few cases is the maxim more applicable that witnesses should be weighed, not numbered.

The most expert evidence is that of the railroad men and steamboat men, and this will be set forth quite fully.

Montgomery 21863
Augusta 33300
Troy 3449
Social Circle 2681

The tradesmen and other local witnesses of the various towns give evidence comparatively of much less importance; but Mr. Wiley of Troy and Mr. Vandiver of Montgomery appear by Poor's Manual to be directors in the Alabama Midland Company.

Although the facts are so well discussed by the Commission, the opinions of the learned judges below have been singularly meagre and inadequate. The questions between Troy and points on the Central of Georgia they hardly refer to at all.

It may be convenient first to define the "basing point system" so often referred to.

This is described as follows by Theodore Welch, the General Freight Agent of the southern portion of the Louisville & Nashville system (in answer to the general interrogatory, p. 191). He says (p. 276):

In case freight is shipped from one competitive point *via* another competitive point to some local point on a railroad, the rule is to allow the railroad from the last competitive point its full local to destination. For instance, a package of freight from New York is shipped by any line to Greenville; the rate from New York to Greenville would be made up of the rate from New York to Montgomery *plus* the rate from Montgomery to Greenville; the Mobile & Montgomery Railroad, on which Greenville is located, would in such case be allowed its full local from Montgomery.

Mr. Welch had testified that in his opinion the rates from Montgomery to Troy were reasonable (p. 275). Answering a cross interrogatory (p. 213), he said (p. 280):

I am basing my opinion upon the rates considered as local rates. The position taken by me in the

direct examination is that the railroads operated between Montgomery and Troy are entitled to their local rates. * * * A shipment of a carload of freight from Louisville to Greenville would, in the sense that the word has been used, be through to Montgomery, but would not be considered a through shipment to Greenville in the sense that the rate per mile, Montgomery to Greenville, should not exceed the rate per mile, Louisville to Montgomery. It is a well established principle, especially in the southern States, that the road making a delivery to one of its local stations, as Montgomery to Greenville, is entitled to its full local. * * * In making rates from Louisville or other competitive points to Troy through Montgomery, Montgomery is regarded as what is known as a *basing point*, as are also Columbus and Union Springs, and the rate from Montgomery to Troy on business from Louisville is the same as the local rate from Montgomery to Troy.

Lee McLendon, division freight and passenger agent of the Alabama Midland line, says (p. 354):

In the construction of rates to Troy from the West, Montgomery is regarded as a basing point.

COMPARISON BETWEEN TROY AND OTHER GEORGIA CENTRAL POINTS.

No evidence was submitted to the Commission by the railroad companies upon this branch of the case.

For some reason Troy is discriminated against, although not only Columbus and Eufaula with their Chattahoochee River connections, but Opelika (p. 64) also are given through rates; and even little Union Springs is a basing point (p. 281). The populations of these localities in

1880 and 1890 are as follows, according to the United States census:

	1880.	1890.
Troy.....	2,294	3,449
Eufaula.....	3,836	4,394
Opelika.....	3,245	3,703
Columbus.....	10,123	17,303
Union Springs.....	1,862	2,049
<i>Montgomery</i>	<i>16,713</i>	<i>21,853</i>

The following comparisons are noticeable:

First, that population is not a vital point. Eufaula and Opelika are but little larger than Troy, yet they have as good rates as Columbus, which is five times its size.

Second, that rail competition is not a vital point. Eufaula has none (the so-called Eufaula and Ozark Railway being a mere branch of the Georgia Central); yet it has as good rates as Columbus and incomparably better rates than Troy.

Third, that water competition is not a vital point. Opelika has as good rates as Eufaula or Columbus; yet it is not situated upon any stream, and it has only the same amount of rail competition as Troy.

Fourth, that possibilities of future development are not a vital factor. Troy increases in population much more rapidly than Eufaula or Opelika.

Mr. McCormick, a Eufaula merchant and one of the witnesses for the railroad company, testified as follows upon direct examination (pp. 204, 340):

Q. State what difference, if any, exists between the circumstances and conditions affecting the trans-

portation of traffic to and from Eufaula, Ala., and the circumstances and conditions affecting the transportation of traffic to and from Troy, Ala.

A. *I do not see that there is much difference* between the circumstances and conditions affecting the rail transportation of traffic to and from the towns of Eufaula and Troy. Eufaula has only one line of railway, while Troy has two distinct lines. Eufaula has water advantages, while Troy has none. These water advantages, *while there is not much business now done by water*, enables us to get better railroad rates than we would otherwise have.

In other words, the restricted water competition at Eufaula (mainly effective in giving access by water to railroad lines crossing the river at other points) is regarded as a set-off to Troy's direct rail competition (p. 340):

The railroad lines coming into Eufaula are under one management or system, and therefore not competing, but the Chattahoochee River, on which Eufaula is situated, reaches numerous lines of competing railways, the names of which I can not at this time give.

The relative distances to Louisville, St. Louis, and Cincinnati by rail (the three points as to which rates on class goods to Troy, Columbus and Eufaula are contrasted) are as follows:

	Troy.	Columbus.	Eufaula.
Louisville.....	542	551	570
St. Louis.....	676	685	704
Cincinnati.....	629	638	657

The distances are given *via* Birmingham, Ala., the nearest rail route, except that Columbus is 29 miles nearer to Cincinnati *via* Atlanta.

Opelika is distant 28 miles from Columbus on the main line to Birmingham.

WATER COMMUNICATION FROM COLUMBUS AND EUFAULA.

Many interested persons, such as merchants of these two towns, give testimony from which it might be inferred that the Apalachicola and Chattahoochee Rivers constitute a magnificent waterway upon which a mighty commerce is ready at any moment to spring up. One or two of their soberer fellow citizens, and the persons whose occupations have led them to be more familiar with this waterway, draw much more modest conclusions.

In connection with this testimony we may examine the official reports of the War Department upon this subject, because the navigability of streams and harbors is a matter of public knowledge of which the courts take judicial notice. (*Peyroni v. Howard*, 7 Pet., 324, 342; *Lands v. A Cargo of Coal*, 4 Fed. Rep., 478; *The Peterhoff*, Blatchf. Prize Cas. 463, 521-2.) We shall refer to the report of the Chief of Engineers to the Secretary of War for the year 1896. For convenience, the relevant portions of this report have been printed by the War Department as the "Annual Report upon the Improvement of Rivers and Harbors in Western Georgia and Florida and in Eastern Alabama, in the charge of F. A. Mahan, Major, Corps of Engineers, U. S. A.; being Appendix O of the Annual Report of the Chief of Engineers for 1896."

(1) *Apalachicola Harbor.*

The amount and method of the commerce in this harbor is described as follows by the Chief of Engineers (p. iv):

The commerce of the port is mainly in timber and stores. It was valued in 1886 at \$2,666,882 and in 1896 at \$3,611,822, an increase of \$944,940. *These materials are taken in lighters from the shore to the anchorage grounds about 20 miles away.*

The witness most familiar with the facts was Mr. John E. Grady, produced by the district attorney, a merchant and collector of customs at Apalachicola, Florida, of which place he had been a resident for forty years. His testimony is more complimentary to the harbor than that of the Chattahoochee boatmen. He testifies as follows with regard to merchandise from northeastern cities (pp. 395-6):

Goods destined for any of the points named would be brought to Apalachicola by river steamers and transferred to the vessels in the bay by barges towed by tugs or by lighters. The distance from Apalachicola to the different anchorages in the Bay of Apalachicola is from 4 to 20 miles. A barge towed by a steam tug can make the trip from one to four hours. Shipments from Mobile and New Orleans, generally brought by vessels of light draft, can be transferred alongside the river steamers at Apalachicola. Goods brought from or shipped to northeastern cities are generally brought by vessels drawing more water, have to be transferred by barge or lighter to the city, thence put on board river steamers, and the same way for goods shipped from Apalachicola to the points mentioned. Vessels

drawing 12 feet of water can enter the Bay of Apalachicola through the west pass entrance and anchor within 4 miles from the city. Vessels drawing 7 feet of water can come alongside the wharf at Apalachicola. Vessels drawing 18½ feet of water can enter the Bay of Apalachicola through the east pass, a distance between 15 to 20 miles from the city.

The commerce of the city he describes as follows (p. 396):

Steamers and sail vessels are now plying between Apalachicola, Fla., and Mobile, Ala. Sail vessels, and occasionally a steamer calls at Apalachicola for lumber and timber bound for northeastern cities, and very often bring merchandise for Apalachicola, but none for interior points to my knowledge. A steamer can make the trip from Apalachicola to Mobile and back in 6 days, a sailing vessel from 10 to 15 days, according to the weather. Steam vessels from Apalachicola to northeastern cities would require from 6 to 8 days; sailing vessels from 15 to 20 days, according to the weather.

Mr. Grady knew of no commerce from Eufaula, Columbus, or other points on the Chattahoochee River to Mobile, New Orleans, Louisville, Cincinnati, St. Louis, New York, or other eastern cities; and none from these cities to Eufaula or Columbus for 15 years past (pp. 392, 395).

W. R. Moore, agent of one of the Chattahoochee River steamboat lines, and a witness for the railroad companies, testified as follows on cross-examination (p. 320):

Ocean or gulf steamers or vessels can not enter the harbor of Apalachicola. Freight carried on a river boat to Apalachicola, destined for Mobile or

New Orleans or New York or other northeastern cities, or brought from those cities to Apalachicola, destined for Eufaula or Columbus, would have to be transferred at Apalachicola to or from the ocean or gulf steamer or vessel from or to the river boat. These transfers are made with barges towed out to said ocean or gulf vessels or from them to the river boat. Vessels not exceeding 5 or 6 feet of draft can enter the harbor at Apalachicola on a high tide. Such a vessel could make a trip to Mobile in two days. I do not know the time it would require such a vessel to make the trip to New Orleans or New York. There is a small steamer and a schooner now running between Apalachicola and Mobile, but none, so far as I know, running between Apalachicola and New Orleans or New York.

He further says (p. 321):

According to my idea, there is no harbor at Apalachicola, because the bay is so filled up that there is not sufficient depth for vessels to enter it, except of very light draft. * * * The harbor at Apalachicola is used almost entirely for lumber.

He also says (p. 320):

There is no through business from or to Columbus or Eufaula via Apalachicola from or to Mobile or New Orleans, or New York and other northeastern cities. I do not know of any shipments, and there are none, from Louisville, Cincinnati, and St. Louis via the Ohio and Mississippi rivers to New Orleans, and thence by Apalachicola to Eufaula or Columbus.

Mr. Joseph, general manager of one of the railway lines, confirmed Mr. Moore upon this last point, except that he said that there was a small through business on the river

to Mobile, New Orleans and eastern cities (p. 323). As to the harbor at Apalachicola, he says (p. 324):

Gulf steamers or vessels cannot enter the harbor at Apalachicola. Freight carried by river boats to Apalachicola destined for Mobile or New Orleans or New York or other eastern cities, or brought to Apalachicola from those places in vessels, destined for Eufaula or Columbus, would have to be transferred at Apalachicola from one vessel to another. Such transfers are made in barges. Only very light vessels of about 5 feet draft can enter the harbor at Apalachicola. Such vessels that enter the harbor at Apalachicola might be able to make the trip to Mobile, but I do not think they could make the trip to New Orleans or New York from Apalachicola.

* * * There is only about 6 feet of water in the inside harbor at Apalachicola. * * * The harbor at Apalachicola is used mainly for the lumber business, in fact, almost entirely.

This shows the valuelessness of the speculations of the Columbus and Eufaula merchants produced on behalf of the railroad companies. Careful analysis of their testimony (for which there is no space within the limits of this brief) shows either vagueness or ignorance of important conditions.

Evidently commerce by water *via* New Orleans must be in little vessels drawing not over 5 to 7 feet of water, or else must be subject to a long trip in lighters, in order to reach the river steamers.

(2) *Apalachicola River.*

This river, as stated by the Chief of Engineers, has a length of 105 miles and a depth of at least six feet. It is formed by the junction of the Chattahoochee and Flint

ivers (p. iv). It is 150 to 200 yards wide, but more or less obstructed by snags and logs in the river (p. 1347). The annual report from 1879 is quoted from as follows (p. 1348):

The present commerce on this river is insignificant when compared with its former proportions. This diminution is due partly to railroad competition, but the shallow outlet at Apalachicola is the prime cause.

Some work was done during the following years, largely in cutting down overhanging trees and getting out snags, old piles, etc., and the condition of this magnificent channel of commerce on June 30, 1895, was described as follows (p. 1350):

The channel was completely opened to navigation, except scattered logs and snags which caused trouble at low water. Overhanging timber and some sharp bends of the banks at the Elbows and Moccasin Slough, which retard boats at all stages of the river, remained to be removed.

(3) *Chattahoochee River.*

The distance from Columbus to Apalachicola by water is 360 miles, and from Eufaula to Apalachicola 275 miles (p. 319), of which the lower 105 miles, as above stated, are in the Apalachicola River, which is formed by the junction of the Chattahoochee and Flint. Not far from this junction, at 223 and 138 miles from Columbus and Eufaula, respectively, is Chattahoochee Junction (p. 319) or River Junction, at which the Louisville & Nashville line crosses the river, thus connecting it with the ports on the east coast of Florida.

The Chattahoochee River is described as follows by the Chief of Engineers (pp. v, vi):

This river is not navigable above Columbus, Ga. It was originally much obstructed from Columbus to its junction with the Flint, 224 miles, by logs, snags and overhanging trees, and by a number of rock and marl shoals. Navigation was difficult and dangerous by day, and impossible by night. * * * The channel below Eufaula is nearly clear of obstructions, and boats drawing $3\frac{1}{2}$ feet have little trouble in navigating the river. Difficulty is still had at St. Francis Bend, five miles above Eufaula, and Hospital Reach, Woolfolk Bar, and Old Head of Uchee, all within 20 miles of Columbus. * * * The annual accumulation of logs and snags is scattered over the length of the river and makes low water navigation dangerous.

Navigation here also suffers by reason of "overhanging trees from the banks" (p. 1357).

The river commerce is described by Mr. Joseph, general manager of the Columbus & Gulf Navigation Co., as follows (pp. 321-2):

There is at present only three steamboats running between Columbus, Eufaula, and Apalachicola, viz: The "Naid," tonnage of 150; "Flint," about 150 tons, perhaps a little more, and the "Bay City," with a tonnage of about 130 tons. The average time required for a boat to go from Columbus to Apalachicola and return is about 5 or 6 days in ordinarily high water, and in low water it takes 7 days or more. The Chattahoochee River is navigable by steamboats between Columbus, Eufaula, and Apalachicola *for six months or more in the year by*

ordinary river steamboats, and during the summer months it is navigable by small boats and barges.

Mr. W. R. Moore, another steamboat agent at Columbus, testifies similarly, except that he claims the river to be navigable "for steamboats" all the year (pp. 317-18). He gives the time of the return trip from Eufaula to Apalachicola at four days. Both witnesses state that the main business is local, Mr. Joseph giving the number of landings at "about 75" while Mr. Moore gives them at "about 164" (pp. 323, 319).

These witnesses, as above shown, have little or no knowledge of any through business. Their testimony is much more valuable on this point, being witnesses for the railroad companies and having a most intimate knowledge of the business, than that of the Columbus and Eufaula merchants. Some of the merchants, also, refused to testify to the existence of any present ocean or gulf commerce by way of Apalachicola. Mr. McCormick of Eufaula says that "practically no business is done between Eufaula and Mobile or New Orleans" (p. 339).

Mr. Dent of Eufaula, who had been in business since 1868, had never received any shipment by river *via* Apalachicola from northeastern cities (p. 343).

Mr. Edmonson of Eufaula had never received but one such shipment, which came from Baltimore and was about 23 years prior to his testimony (p. 347).

(4) *Effect of competition by Apalachicola.*

It is a safe conclusion from this testimony that (while, of course, competition *via* Apalachicola would come into

play if the railroad rates were made sufficiently high) the possible Apalachicola route cuts no figure in the establishment of the present rates; and whatever assistance is given to Eufaula and Columbus by the river in regulating freight rates, comes from the joint rail and water route from Jacksonville and eastern Florida points *via* Chattahoochee Junction. This is the testimony of Mr. Edmonson of Eufaula, who says (p. 351):

I can not say that I have any data upon which I can estimate with certainty the possible effect water competition by the river between Eufaula and Apalachicola and thence by water to Mobile, New Orleans and northeastern cities and Ohio River points, has on rail rates between Eufaula and these points. I can not say that this water competition has at any time controlled and actually fixed these rail rates within my knowledge; but I do know that the water route to Chattahoochee Junction has had the effect of controlling and fixing rail rates.

It may be remarked that so far as Eufaula is concerned, this gives advantages little superior to those of Troy; for Eufaula has no local railroad competition, and the joint water and rail routes are slow and circuitous; while Troy has the benefit of competition between the Alabama Midland and the Central of Georgia.

The following extracts from the testimony of W. R. Moore, agent for "the boat lines in Columbus, Ga." (p. 321), are of interest in this connection (pp. 175, 318):

Q. What effect, if any, does the fact that the Chattahoochee River is navigable for steamboats between Columbus and Apalachicola have upon the rates charged by railroads between Columbus and

Eufaula and Mobile, [New Orleans and eastern cities]?

A. The fact that the Chattahoochee River is navigable by steamboats between Columbus and Apalachicola does not, I think, have any effect upon the rates charged by railroads between Columbus and Eufaula and Mobile [New Orleans and eastern cities]. At certain seasons of the year, on account of the low stage of the water in the river, the boats would be unable to do the business from the east, and steamers could not get up to anchorage in the bay at Apalachicola on account of the condition of this bay.

Q. Are the rates which are now charged between Columbus, Eufaula and Mobile [and New Orleans] higher or lower than they formerly were? If you say that they are lower now than formerly, state if you can when the various reductions were made and what were the causes of those reductions.

A. The rail rates now charged by railroads between Columbus and Eufaula and Mobile [and New Orleans] are lower than they formerly were. Said rates have been declining since 1870. *On account of vessels being able to land right at the dock at Savannah, it enables them to put their goods through at a much less rate, as there is not so much handling to be done.* In former years western freight went down the Mississippi River to New Orleans, and from there to Apalachicola, and from Apalachicola to Columbus and Eufaula, whereas they now come direct by rail, and consequently require *much less expense in handling.*

Q. Suppose the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per 100 lbs., what effect, if any, would it have towards inducing the shipment of such cotton and of other freight by river to Apalachicola and thence by vessel to New Orleans?

A. If the rail rates on cotton from Eufaula and Columbus to New Orleans should be increased 18 cents per 100 lbs., the effect, in my opinion, would be to have *the tendency* to again open up the shipment of cotton by river to Apalachicola and thence by vessel to New Orleans and eastern points.

This last question was suggested by the fact that the present rate on cotton from Troy to New Orleans is 68 cents, whereas from Columbus to New Orleans it is 50 cents; and that the Interstate Commerce Commission have directed that the Troy rate be reduced to the Columbus figure. Witness commits himself to nothing beyond a "tendency."

The next interrogatory asked what would be the result of increasing the rates on class goods from the northwest to Columbus and Eufaula so as to make them equal to the rates from other points to Troy (pp. 175-6). The witness answered as follows (p. 318):

If the rail rates from Cincinnati, Louisville and St. Louis to Columbus and Eufaula were increased over those now in effect as specified in this interrogatory, the effect would be to have *a tendency* to open up the shipment of freight via the Ohio and Mississippi Rivers from those points to New Orleans, and thence by vessel to Apalachicola and by steamboat from Apalachicola to Eufaula and Columbus.

It is the opinion of Mr. Moore, as shown by his two following answers, that the present water rates *via* the Chattahoochee river are as low as they can be got (pp. 318-19):

A. If steamboats could obtain full cargoes of freight during the entire season of navigation on every trip,

going and returning between Columbus, Eufaula and Apalachicola, the lowest rate per 100 lbs. at which they could afford to carry freight between Columbus and Eufaula would be 35.4 on first-class and so on down.

A. The rates now usually charged by steamboats between Columbus and Apalachicola on the different classes of freight referred to in the ninth interrogatory are as follows: On first class 35.4 per 100 lbs. [etc.].

Witness testified, however, that at these rates, if the volume of traffic be sufficient, "any amount of tonnage necessary could be obtained for traffic on the Chattahoochee River" (p. 319).

Being asked upon cross-examination as follows as to the assumption "that steamboats could obtain full cargoes of freight during the entire season of navigation on every trip" (p. 216):

Q. Has that state of things ever existed within your knowledge? Is it probable that it will ever exist?

Mr. Moore answered as follows (p. 321):

There has been a time within my knowledge when steamers could obtain full cargoes of freight during certain seasons of navigation on every trip going and returning between Columbus, Eufaula and Apalachicola, but none during the entire season of navigation. I do not think it probable for such a state of boat traffic to ever exist during the entire season of navigation.

Mr. Joseph, manager of the Columbus & Gulf Navigation Company, was unable to answer the first question above quoted as put to Mr. Moore. Answering the next

question, he stated that the rates are lower than formerly, but that no shipments are being made, and that he is unable to state the cause of the reductions. The next two questions he answered as follows (p. 222):

A. If the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per 100 lbs., *it would not have any effect* towards inducing shipment of cotton or other freight by river to Apalachicola, thence by vessel to New Orleans, *because this route is an impracticable one*, there being other routes more convenient.

A. If the rail rates from Louisville, Cincinnati, and St. Louis to Columbus and Eufaula should be increased over those now in effect as specified in this interrogatory, *I do not think it would have any effect* towards inducing shipments of freight via the Ohio and Mississippi Rivers to New Orleans, and thence by vessel to Apalachicola and by steamboat to Columbus and Eufaula.

Mr. Joseph testified that he thought that "if steamboats could obtain full cargoes of freight during the entire season of navigation on every trip going and returning," they could afford to carry freight at rates 20 per cent. less than the present ones (p. 322); but upon cross-examination, he said (p. 325):

Within my knowledge there never was a time when steamboats could obtain full cargoes during the entire season of navigation on every trip going and returning from Columbus, Eufaula and Apalachicola, nor a time when the river rates were 20 per cent. lower than they are now. I know of no reason to think that it is probable that such a condition of affairs will ever exist.

These thoroughly expert witnesses confirm the testimony of Mr. Oliver C. Wiley, the Troy manufacturer, who had formerly been President of the Alabama Midland Railway Co. (p. 255). Mr. Wiley testified as follows (pp. 164, 253):

Q. Is there any material difference between the circumstances and conditions affecting the transportation of traffic to and from Eufaula, Columbus and Opelika on the one hand, and Troy on the other? If so, what? * * *

A. I know of no material difference affecting the transportation of traffic to and from Troy on the one hand and Eufaula, Columbus and Opelika on the other. Eufaula and Columbus are both river towns, but no goods are shipped from the west *via* the Chattahoochee River.

DISCRIMINATION IN FAVOR OF COLUMBUS, EUFAULA AND OPELIKA.

The figures are well stated in the able opinion of Mr. Commissioner Clements. The discrimination which is especially of interest here is, first, upon "class goods" brought in from northwestern points, and second, upon cotton shipped to New Orleans.

(1) *Class goods*.—These goods are "shipped from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio." The rates are the same to Eufaula and Opelika as to Columbus. Columbus is a "basing point" as against Troy. It is evident, however, that no such goods could be shipped *via* Columbus to Troy, because the rates by the shorter route via Montgomery are so much lower (see

tables at p. 61). Under the "basing point system" the goods come through *via* Birmingham, Ala., and the Louisville & Nashville Railroad, to Montgomery, upon through rates which are very low per ton per mile. The full local rate is then added, so that from Montgomery to Troy, and even for the whole distance from northwestern points to Troy, there is a very high rate per ton per mile.

The effect of this is to throw Troy altogether out of competition with neighboring points even as a distributing center to the territory immediately surrounding it; and to distribute its natural mercantile profits, not simply between comparatively large places like Montgomery and Columbus, but among such small places also as Eufaula, which differs little from Troy in size, which has no effective all-water competition, which has no all-rail competition, and whose strategic advantages, if any really exist apart from official favoritism, consist in certain part rail and part water routes, *via* the Chattahoochee River and railroads crossing that river at other points.

The distance from Birmingham to Troy *via* Columbus, following the Central of Georgia all the way, is 242 miles. The distance from Birmingham to Eufaula, similarly estimated, is 251 miles. The distance from Birmingham to Columbus, and thence by water to Eufaula, is 242 miles. The distance from Birmingham *via* Montgomery to Troy and Eufaula are 148 and 176 miles respectively.

The question presented to the Interstate Commerce Commission was whether the differences in strategic situation between Eufaula and Troy justified these or any lesser discriminations in rates. It will be noticed that

the rates to Troy are on a majority of the classes of goods between $\frac{1}{3}$ and $\frac{1}{2}$ higher than those to Eufaula (p. 61).

Comparison is also made as between Troy and Opelika, a place which has no competition by water, and rail competition only from two companies; and which is 129 miles distant by rail from Birmingham, as against a distance of 148 miles between Birmingham and Troy.

This equality seems to have been conceded to Opelika by the railroad companies as a result of the contest made by that town before the Interstate Commerce Commission in 1887, which resulted in the interesting opinion of Commissioner Walker in *Harrell v. Columbus & Western R. R. Co.*, 1 Int. C. C. 236; an opinion which clearly describes the "basing point system" in the southern States, and is subject to criticism only in that it repeats what the undersigned believes to have been the fundamental error of the Commission in misinterpreting the long and short haul clause. While the petition of Opelika as to these class goods was not then granted, the town has since somehow got the rates which it desired.

The Interstate Commerce Commission, after a very full discussion of this case, say (p. 65):

Columbus and Eufaula are located in or are contiguous to the territory in which Troy is situated, and the former at least is in active competition with Troy for business in the country immediately around Troy. We are of the opinion that the class rates to Troy from Louisville, Cincinnati and St. Louis should be at least as low as those above given to Columbus and Eufaula—

and, it must be added, to Opelika.

(2) *Cotton*.—The rate from Montgomery to New Orleans for cotton is 45 cents. The rate from Troy is made up by adding to this the local between Montgomery and Troy, thus making the total 68 cents. This is a prohibitory, not a revenue, tariff. The result of it is that no cotton is shipped from Troy to New Orleans, either now (pp. 332, 355) or for at least seven years past (p. 233), since the rate to Savannah from Troy is 47 cents. The cotton growers in the vicinity of Troy thus lose the benefit of the increased price at Liverpool of cotton shipped from New Orleans (pp. 59, 156).

The consequence is that cotton brings less at Troy than at Montgomery, although Troy is 52 miles nearer to the Atlantic seaboard, because Montgomery is given the same rate to New Orleans as to Savannah; and yet it does not appear that Montgomery cotton is any better intrinsically than Troy cotton. Troy is almost equidistant between Savannah and New Orleans (359 and 372 miles, respectively). Montgomery, which gets as cheap a rate to Savannah as to New Orleans, is much less centrally located (411 and 320 miles, respectively. These distances to Savannah are *via* the Alabama Midland. The distances are a little shorter *via* the "Savannah Short Line," which is not a party to these proceedings. The distance from Montgomery by this line is 340 miles; from Troy, by this line and the Central of Georgia, 313 miles.) Yet Troy does not lay claim to as good rates as Montgomery in this particular. It merely objects that the rate of 68 cents to New Orleans, as against Montgomery's 45 cent rate, is excessive and unreasonable; and it bases

its claim not upon § 1 but upon § 3, asserting that there is undue discrimination in favor of Columbus as well as of Montgomery.

The distance from Troy to New Orleans, as above stated, is 372 miles. The distance from Columbus to New Orleans is 414 miles.

A mileage rate from Troy to New Orleans based on the mileage rate from Montgomery to New Orleans would give a rate on cotton from Troy to New Orleans of 52.21 cents. The Commission, however, gave Troy a rate of 50 cents for the following reasons (p. 61):

As a general rule, however, while the aggregate through rate steadily increases as the distance increases, the rate per ton or hundredweight per mile decreases. Under this rule, the distance from Troy being 52 miles greater than from Montgomery, the rate per 100 lbs. per mile from Troy, in the absence of exceptional conditions, should be slightly less than that from Montgomery. In view of this rule, and of the rate of 50 cents from Columbus, a longer distance point by 42 miles than Troy, our conclusion is that the through rate on cotton from Troy *via* Montgomery to New Orleans should not exceed 50 cents per hundred pounds.

The object of the railroad companies in making these prohibitory rates upon cotton from Troy is very clear. It is to force all of the cotton to go eastward to Savannah, although naturally, the difference in distance being only 13 miles, part of it would go to New Orleans in order to get the better prices there. Upon cotton going to New Orleans, however, the Plant system, (to which the Alabama Midland belongs,) or the Central of Georgia, as

the case might be, would only make its proportion of the through rate from Troy to New Orleans; while it gets the whole compensation for hauling the cotton from Troy to Savannah, or (in the case of the Plant system), Charleston, Brunswick or Jacksonville.

COMPARISON OF TROY WITH MONTGOMERY.

A large mass of testimony upon this point was produced after the case came into court. It is discussed at length by Mr. Shaver in his brief upon the present appeal. The testimony produced before the Commission was confined to the affidavit set forth at pp. 158-9.

Montgomery is a much larger place than Troy, but that is clearly no ground for taking it out of the operation of the long and short haul clause, as was indeed admitted by the learned counsel for the railroad companies at the Court of Appeals (Supplementary Brief, p. 6):

In this case the defendants do not pretend to offer the slightest justification for charging less for a longer than for a shorter distance, except the solitary fact of competition at the longer distance point. If the fact of competition cannot be legally considered at all, this case must necessarily be decided against the defendants so far as the long and short haul question is concerned.

The learned counsel's comparison of Montgomery and Troy is adapted from the comparison which he made in a former case between Augusta and Social Circle, but "circumstances and conditions" render him unable to make the contrast as strong here as it was there.

No great weight is placed upon rail competition, Troy has that. It has the benefit of the first eight lines mentioned on page 122 of Mr. Baxter's brief.

Defendant's case substantially rests upon the alleged probability of effective water competition *via* the Alabama River to Mobile. A large number of witnesses—railroad officials, steamboat men and business managers—is produced to the effect that *if Montgomery and Troy were equalized by raising the Montgomery rates to the present Troy figures*, water competition would spring up which, even if the other railroads also raised their rates, would destroy the Alabama Midland through business. These opinions were mainly based upon alleged experience during a controversy between the Montgomery merchants and the railroad companies, when the merchants ran a line of steamers to Mobile. The opinions are not, however, backed up by actual figures, and we are not given the information necessary to verify the wisdom of these opinions by actual computation. This omission is not due to any lack of insistence on the part of the District Attorney. He filed the following cross-interrogatory to the Montgomery witnesses (p. 218):

Q. Have you any *data* upon which you base any estimate you may give of the effect of an advance in rail rates such as is inquired about in the direct interrogatories propounded to you in inducing shipments from New York and the northeast by ocean to Mobile and thence by river to Montgomery, and in inducing shipments from Louisville, Cincinnati and St. Louis to Mobile, and thence by river to Montgomery? If you have such *data*, give it.

The answers of the witnesses to this cross interrogatory will be found at pp. 284-5, 293-4, 223, 288, 296, 300, 308, 303 and 305 respectively. Among all these answers the only actual figure given is by Mr. W. F. Vandiver, a Montgomery grocer, as follows (pp. 293-4):

In 1886, when there was a steamship line between New York and Mobile, the rate through to Montgomery on first class was 55 cents a 100 against an all-rail rate of \$1.14. This being possible and highly probable, I can not see why the rate should be higher than 55 cents through to Montgomery *via* the water route; that is, steamships from Boston and New York to Mobile, and by our line of steamers to Montgomery, which was the old rate established by the old steamship line in 1886. Should this company be established, and the old rates reestablished, the rail lines would have to largely reduce their present rate, or the business would go to Montgomery entirely by the water route.

If this rate of 55 cents from New York to Montgomery was normal, it would be significant. It was evidently abnormal, because the merchants' war only lasted two years (p. 289), and the rate from New York to Montgomery is still \$1.14. If the steamers could ship first class goods through at a profit for any such sum as 55 cents, the all-rail rate of \$1.14 could not be maintained. The 55-cent rate was evidently the result of a "rate war," unremunerative and of no possible permanence.

We may therefore dismiss all this speculative evidence from consideration as too vague, and because the expert witnesses failed to back up their assertions with proof. Even as against the \$1.14 rate, the through business does

not pay, and the river steamers are practically confined to local traffic (p. 223). Goods sent by river have to be insured at an advance of $\frac{1}{4}$ to $\frac{3}{4}$ per cent. (p. 302). Not more than four small steamers run at any time, and while "the Alabama River is navigable every month in the year by steamboat between Montgomery and Mobile," nevertheless "for two months in the year it is navigable only by very light-draft boats and barges" (p. 220). The distance by river is 400 miles from Montgomery to Mobile, while by rail it is only 180 miles (p. 222). The time when the river is low is when the cotton crop is moving, so that the steamboats "are unable to carry any through cotton from Montgomery (p. 292). The Chief of Engineers in the report above referred to states that it is navigable for ten months, but that "during the remaining two months the depth of water on the bars between Montgomery and Selma prevented vessels from passing" (p. ix).

THROUGH AND LOCAL RATES.

(1) The distinction between the "through rate" from Louisville to Montgomery and the "local rate" from Montgomery to Troy is not based upon the assumption that there was to be a transshipment at Montgomery.

J. B. Coreoran, who had been an agent for the Alabama Midland Railroad at Troy for seven years at the time of testifying, says with reference to class goods shipped from western points to Troy via Montgomery (p. 233):

Generally there is no transfer of such goods at Montgomery from the cars in which they are brought

to that city to the cars on the Alabama Midland and Georgia Central companies unless the shipment is less than a carload; although the agent, when he has time and cars, may transfer carload lots for the purpose of saving mileage.

On cross-examination he states that this testimony (p. 234)—

Is based upon observation and experience in the line of my duties as agent, because, if such transfer was made at Montgomery, it would be shown by the freight bill, and these freight bills, as a general thing, do not show that such transfers have been made at Montgomery, but indicate that the cars have come through.

J. W. Nall, agent for the Central of Georgia at Troy, says of class goods similarly shipped (p. 245):

Occasionally such freight is transferred from car to car at Montgomery, but frequently we get it in through cars.

Theodore Welch, general freight agent at Montgomery of the Louisville & Nashville system, which connects them with the roads above mentioned, says (p. 280):

The freight would go through to Troy in the same cars in which it is brought to Montgomery; at least this is the general rule. Less than carload shipments destined to Troy would doubtless be transferred at Montgomery.

W. J. Haylow, master of transportation of the Alabama Midland, says of these shipments (p. 270):

Some of the cars in which the goods are shipped go through to Troy, and sometimes goods are transferred at Montgomery to cars on the roads of the

Alabama Midland and Georgia Central companies. The goods are not transferred from car to car at Montgomery unless the through car is rejected on inspection on account of bodily defects.

J. E. Henderson, a Troy merchant, says of class goods (p. 262):

I can state of my own knowledge that there is no transfer of such goods at Montgomery from the cars in which they are brought to that city to the cars on the roads of the Alabama Midland and Georgia Central Companies.

Oliver C. Wiley, a Troy manufacturer and former president of the Alabama Midland, says (pp. 251-2):

There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars of the Georgia Central or Alabama Midland railroads, unless the other car should be disabled.

Charles Henderson, a Troy merchant, says (p. 230):

I am able to state of my own personal knowledge that such goods are received at Troy in the same cars in which they were loaded at the initial point, and they simply transfer the car at Montgomery.

W. F. Shellman, traffic manager of the Central of Georgia system, says of similar goods shipped by that system from western points *via* Montgomery and Troy that they "are sometimes sent through in the original cars, and at other times transferred in route."

The same rules hold as to shipments of cotton from Troy *via* Montgomery to New Orleans. These ship-

ments go *via* the Louisville & Nashville Railroad, and Mr. Welch, representing that railroad, says (p. 281):

When cotton is shipped via Montgomery through New Orleans from Troy, it goes through in the same cars as a general thing.

Mr. Haylow says of cotton (p. 271):

When cotton is shipped from Troy via Montgomery to New Orleans whether or not it is transferred at Montgomery from the cars in which it was shipped at Troy to cars on the lines of the L. & N. R. R. depends on whether it is shipped in carload lots or less than carload lots. It is transferred from car to car when in less than carload lots, and when the cars are rejected on inspection also.

Bradford Dunham, superintendent of the Alabama Midland, says vaguely of both cotton and class goods, on cross-examination, that they are "sometimes" transferred (pp. 273-274). Lee McLendon of the same line is similarly guarded (p. 353).

(2) No attempt is made to show that the terminal expenses are any less at Montgomery than at Troy in proportion to the traffic. Such a calculation would be very difficult (Theodore Welch, p. 280; Lee McLendon, pp. 353-4). Probably there is no difference (Bradford Dunham, p. 273).

The expenses of transferring at a junction point are but slight in the case of carload lots. Nor can it be great when the goods, being less than carload lots, are transferred from car to car, as the cars can be brought up along-

side. Testifying as to these transfers, Mr. Shellman of the Central of Georgia said (p. 331):

I have no means at this time of reducing the extra expense at Montgomery on these shipments to figures. Can only say in a general way that in cases where cars are sent through Montgomery to destination we have the expense of shipping them between the L. & N. and Central roads, and in cases where the freight is transferred from car to car in addition to the expense of switching there is the expense of transferring them by hand. I am not prepared to state what such expense amounts to per 100 lbs. or per car.

(3) Local freights are not a measure of the reasonableness of through freights over the same line of road. It will be noticed that in measuring through freights by local freights the railroad companies are violating the principles of the Texas Pacific case upon which they so much rely. Their own witnesses confute them.

Bradford Dunham of the Alabama Midland says (p. 273):

The cost of handling local freight is much greater than of handling through freight per ton per mile.

Theodore Welch of the Louisville & Nashville system says (p. 280):

The cost of handling local freight is greater than the cost of handling through freight per ton per mile.

Lee McLendon of the Alabama Midland testifies to the same effect (p. 354).

Mr. Shellman of the Central of Georgia, who had testified that the proportions of through rates received by

the Alabama & Midland and the Georgia Central line between Montgomery and Troy were reasonable, explains his testimony as follows (p. 331):

They are based on the local rates of the Alabama Midland Ry., which is the short line between Montgomery and Troy, the long line accepting the same proportions. In speaking of these rates as reasonable in my answer to the direct interrogatories, I did so with reference to this fact. There is some difference in the expense of handling local freight and of handling through freight, the expense of handling local freight being greater than the expense of handling through freight per ton per mile.

He claims that these shipments "could not properly be called through freight" because they "would be handled by local trains." This seems to be a mere quibble, based on unsubstantial distinctions contrary to the ordinary usages of speech among railroad men.

The Alabama Railroad Commission does not (pp. 281, 331-2) and can not fix rates on interstate through freights. Its rates are on local freights and are therefore presumptively much too high for through freights.

PECUNIARY INJURY TO TROY.

The opinion of the Commission clearly explains the injuries suffered by Troy through these rates. They cut the Troy merchants off from supplying goods to the surrounding villages. Thus "first class goods" shipped from Louisville to be consumed in the little town of Brundidge, 17 miles east of Troy, pay 146 cents freight if supplied by a wholesaler at Montgomery, and 168 cents if supplied by a wholesaler at Troy (p. 62).

EFFECT UPON RAILROAD COMPANIES OF COMPLIANCE
WITH THE COMMISSION'S ORDERS.

If the railroad companies should raise their rates sufficiently to Montgomery, Columbus, etc., there would be no discrimination against Troy; and unless the various localities could show that the rates were unreasonable *per se* under § 1, there would be an end to this controversy. The Commission, however, have not directed that the rates at Columbus, etc., be raised, but that the rates at Troy be reduced.

What would be the effect on the railroad companies of this reduction?

The Central of Georgia makes no complaint of any evil effect to come, and therefore we may presume that it would not be harmful to that company.

The Alabama Midland road, however, pleads poverty, and gives us to understand that so vast a revolution of its present system and reduction of its rates would involve its financial ruin.

How vast would this revolution and reduction really be?

An examination of the figures shows that the reduction in net profits would be slight; but that the reduction of the appellee's argument is *ad absurdum*.

The Alabama Midland road was sufficiently fortunate (for the purposes of appeals to the sympathy of the court in this suit) to have made a deficit of operating expenses over gross earnings of \$77,564.57 in the fiscal year 1893. These figures are given in the deposition of Mr. McLendon, a young man in its office at Montgomery. It is somewhat significant that this information was elicited

by an interrogatory filed August 16, 1894 (p. 206), and answered apparently on or not long previously to January 21, 1895 (p. 240); yet that no question was asked by appellees, and no answer given by the witness, with reference to the earnings of the road for the fiscal year 1894, as to which (as well as the net earnings for the previous fiscal years) this court must remain without information, unless it is permissible to consult Poor's Manual.

Our lack of information from the record upon this point is not due to lack of inquiry on the part of the district attorney. If the witness was really the proper person for appellees to produce upon this subject, there can be no doubt that he could have obtained the necessary information had he cared to do so. The question and answer on this point are as follows (pp. 214, 354-5):

Q. Give similar statements of amounts of revenue as are above enquired about for the fiscal years from July, 1891, to June, 1892, and from July, 1893, to June, 1894?

A. I have not the information *at hand* necessary for me to give similar statements of amounts of revenue as above testified about for the fiscal years, July, 1891, to June, 1892, and from July, 1893, to June, 1894.

If a deficit of \$77,564.57 is intended to be taken as the normal result of the railroad's operations, we are led to the conclusion that there must be a speedy foreclosure and sale of the road, resulting in a smaller capitalization. As no application has been made for the substitution of

any receiver as party defendant in the present suit, it is perhaps fairly presumable that the figures for the fiscal year 1893 were abnormal.

Assuming them, however, to be normal, and assuming that Mr. Plant and the other owners of the road are running it from a public spirited desire to benefit this section of Alabama to the extent which their purses will allow, how much is the loss which the railroad would immediately suffer by complying with the requirements of the long and short haul clause of the Interstate Commerce Law? The precise amount which it would lose upon *all* traffic from the east, as measured by the experience of the fiscal year 1893, is shown by Mr. McLendon, to be \$7,448,82. Such a reduction would reduce the gross earnings of the road for that year from \$490,767.77 to \$483,318.95. It would increase the deficit from \$77,564.57 to \$85,013.39. But the railroad is not required to comply with the statute as to *all* traffic from the East, and the actual loss under the Commission's order is not given us.

Mr. McLendon furnishes us no figures from which we may infer the result of giving fair treatment to Troy in relation to goods shipped to and from the west. The extent to which his figures go, when considered in connection with the extent to which they do not go, affords an interesting subject for speculation. It may, however, be gathered that the loss would be small, even in comparison with the figures last considered. The entire competitive traffic of the road, according to Mr. McLendon, is \$152,862.33, while the competitive traffic from eastern

points to Montgomery is \$127,032.31, leaving only \$25,830.01 for all competitive traffic, eastward and westward, not belonging to the single subdivision just mentioned (p. 352).

The Alabama Midland road is a part of the Plant system, which includes a large number of other roads in Georgia and Florida, and one road running up to Charleston, as well as certain connecting steamship lines. The Midland is doubtless operated as a part of a whole, and Mr. Plant pays little heed to the deficit upon any one arm of his octopus, provided he gets a comfortable profit from the whole of it. We are not given sufficient information as to the division of rates between the Alabama Midland and other railroads in the Plant system to enable us to judge whether its profits fairly represent its share of the work, or whether, as not infrequently occurs, part are going into some other treasury.

And in view of the defects in the direct examination of McLendon, and his failure to answer the cross-interrogatory above quoted, it is submitted that the whole testimony as to poverty of this railroad should be thrown out.

ARGUMENT.

If the construction placed by the undersigned upon the statute is correct, its application to the facts of the case is very simple. This court has full appellate jurisdiction over the decree of the Circuit Court. The Circuit Court, however, is not charged with any duty of reviewing the Interstate Commerce Commission, but with the specific duty of discovering whether or not this order was "lawful."

Before taking up the provisions of the order *seriatim*, a few premises may be made:

First: Congress is entitled to have its experiment fairly tried, irrespective of the wisdom of the experiment. The statute was within its constitutional power. It came to the conclusion that, whether from insufficient ability, or perhaps insufficient respectability, railroad directors as a class were not fit to be trusted with the final power of making rates. It believed that their rates operated to foster special interests (generally their own), and prejudice the main body of the public which supports the roads, as well as the bondholders who built them, and in many cases even the stockholders as well.

Various solutions of the problem were proposed. Some were for Government ownership. Others were for a complete system of Government control. Congress finally settled upon a conservative supervisory system, intended to correct rates which were extortionate or discriminatory. The whole value of such a system lies in the wisdom of the persons who are to administer it, and the rapidity and effectiveness of their work. The administration of this system is confided to the Interstate Commerce Commission; their decision to be upon some points final, upon other points subject to review by the court. It may be that we are mistaken in believing that a body of experts like the Commission is more competent to administer such an act than any judge or court whose time is mainly taken up with other business. Whether this opinion be mistaken or not, it is evident that Congress concurred in it.

So far the railroads have succeeded in preventing a

fair trial of the system. It is respectfully submitted that it is entitled to a fair trial; that if a fair trial shall divulge the fact that Government supervision, even to this very limited extent, is impracticable, cessation of attempts at such supervision will the more speedily occur; and that if the railroads succeed in keeping powerless the Commission which administers the present law, Congress will be obliged, however reluctantly, to enact a more rigid law, and will do so. It is believed, however, that if the second, third and fourth sections be administered by the courts, in their *quasi*-appellate jurisdiction over the Commission, according to their meaning and intent as clearly shown (in the case of the only ambiguous phrase therein contained) by the settled construction of the English statute from which the second section was taken—and if the railroads be not suffered to continue their present plan of putting in “dummy” defenses before the Commission and trying their causes *de novo* in the Circuit Court—the law will prove to be fair, wise and beneficial to the railroads as well as to the public.

Second: That the question apparently considered by the learned Circuit Court of Appeals, whether the officers of Southern Railroad & Traffic Association “are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy,” is altogether immaterial. It was unnecessary for the Interstate Commerce Commission to inquire into this question, or for the United States Attorney to introduce any evidence upon it. The remark of that learned court that “the carriers are better qualified to adjust such matters than

any court or board of public administration" is a judicial *dictum* upon a legislative question.

Third: That the burden of proof was before the Circuit Court, and is before this court, very strongly upon the railroad companies. They are bound to show, not simply that the Commission's order was unwise or indiscreet, but that it was not "lawful."

Fourth. That the wealth or poverty of the railroad company has no relevance to the question of discrimination, although it would be doubtless relevant to the question whether or not the rate was reasonable under § 1. However embarrassed a railroad may be, and however much it may need money, it must be fair both as between individuals and as between localities. We repeat this on account of the pleas which have been made on behalf of the Alabama Midland road; but the imposition of fair rates would be but a trifling expense even to that road, and we are without information as to whether it is really a paying or non-paying member of the "Plant system" of which it is a component part.

Taking up now the various requirements of the Commission, they may be treated very briefly.

(1.)

On class goods shipped from Louisville [etc.] to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Ga., and Enfield, Ala. [and Opelika, Ala.].

The simple question thus raised is, whether the preference given to the places last named is "undue" or

"unreasonable." No question of power in the Commission is involved. It is simply to weigh the facts. Are the lesser distance and the rail competition at Troy overbalanced by such competition as exists at Eufaula? Is the slightly greater distance from Troy than from Opelika (the rail competition being the same) sufficient to justify the existing discrimination? These are eminently questions for the decision of the Commission. Judge Bruce says little upon them. Judge McCormick says nothing. It is respectfully submitted that, whatever may be the opinion of the court as to the wisdom or unwisdom of the Commission's action, there is nothing to say in support of the action of the courts in this suit.

(2.)

On shipments of cotton from Troy aforesaid through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per hundred pounds.

This rate is fixed in comparison with Columbus. The same argument that sustains the first clause of the Commission's order sustains this clause also.

Examination of any railroad map will show that Columbus, while 42 miles further off than Troy, has no better means of communication with New Orleans. It can not communicate advantageously through Montgomery except *via* the Central of Georgia. Troy has the same opening and has the Alabama Midland as well. The river is so low during the cotton season as to offer no practical assistance. It will be remembered that the worst part is above Eufaula. The all-water route *via* Apalachicola is impracticable for the further reason that ~~that~~ *he*

harbor there is not deep enough for a large business; and the part-water route *via* Chattahoochee Junction would simply put the goods into the hands of the Louisville & Nashville road, which carries the shipments sent *via* Montgomery.

(3, 4.)

On shipments of cotton from Troy [to West Point or Norfolk for export, or to Brunswick, Savannah, or Charleston for any purpose] no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid.

It will be noticed that the long and short haul clause is not applied to any east-bound shipments from Troy except shipments of cotton. As stated at the opening of this brief, it is unnecessary to consider shipments over the Central of Georgia, because that road is bound to meet the rates of the shorter line or abandon the Troy business.

The Alabama Midland rates are subject to the long and short haul clause; for competition is not a dissimilarity of circumstances and conditions within the meaning of that clause, and competition is the only excuse for special privileges to Montgomery (Brief for Appellee, p. 46):

So far as said order of the Commission is concerned, the only question of law for this court to decide is, whether competition of any kind, and if so, of what kind, can be considered as one of the circumstances and conditions referred to in the fourth section of the act.

The competition at Montgomery is relevant only to inquiries by the Commission upon application of the railroad company under the proviso to § 4. No such application has been made; and had such an application been made and decided, no power is given to review the decision of the Commission.

(5, 6.)

On shipments of class goods from New York [etc. and] of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

These clauses are supported by the same arguments as the clauses last before considered. It will be noticed that the long and short haul clause is not applied in favor of Troy except as to class goods from the northeast and phosphate rock from the two States of South Carolina and Florida.

It is respectfully submitted that the decrees of the lower courts should be reversed and that the circuit court should be directed to enforce the order of the Interstate Commerce Commission.

EDWARD B. WHITNEY,
Assistant Attorney General.

○

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 563.

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

THE ALABAMA MIDLAND RAILWAY COMPANY
ET AL.

REPLY TO MR. BAXTER'S SUPPLEMENT.

As Mr. Baxter's supplemental brief was not filed until just before noon of March 16, 1897, the last day of the oral argument, it was not possible carefully to examine it. I desire to submit a few observations upon it.

Judicial notice.—Mr. Baxter quotes from the brief for appellant in No. 539, p. 73, a portion of one sentence. The

whole paragraph from which the quotation is made is as follows (referring to the statistics as to free cartage):

These statistics were collected in pursuance of the legal duties of the Commission, which was entitled to use them, because they had become part of its quasi-judicial knowledge as a board of experts. This Court would seem entitled to examine the statistics, because, by incorporation in an official report, they have become matter of public knowledge, as well as because, in reviewing a decision of a board of experts, it is entitled to consider everything which the board could and did consider.

Two reasons are here suggested for judicially noticing the information conveyed in the Commission's report concerning the practice of free cartage: First, that through the report the statistics had become matter of public knowledge; and second, that the Court in reviewing the decision of the Commission is entitled to consider everything which the Commission could and did consider.

The first of these reasons is partly applicable to the present case; the second not at all.

The Commission in its annual report makes no mention of any single railway company's earnings. The publication upon which Mr. Baxter relies is the report by the statistician of the Interstate Commerce Commission, made to the Commission. It consists of a tabulation of the returns made by various railway companies. The Commission probably made

no use of this tabulation in the present case, since it did not occur to the Alabama Midland Railway Company to plead poverty until after the case got into court. If such a plea had been made before the Commission, it would doubtless have used the reports of the railway, as tabulated by its statistician, as a basis of inquiry; but it would have prosecuted the inquiry further by examining into the correctness of the figures concerning distribution of earnings and expenses as between the main line and branch line of the company; its relations to the Plant system; and whether it received a fair apportionment of the through rates over that combination of railways and water lines, etc. In prosecuting this inquiry it would doubtless have utilized such information as is afforded by Poor's Manual and other standard publications upon railway matters, testing their accuracy by original investigations.

The limits of judicial notice in this direction are not well defined (154 U. S., at pp. 408-9). It may be an open question, even, whether the cartage statistics actually considered by the Commission in the other case are thus noticeable; a question wider open whether statistics collected and published by the Commission but not called to its attention in the present investigation, and first appealed to upon argument in this Court, are noticeable; and likewise whether upon such an appeal the Court may use what is common knowledge among railroad men, ascertainable through newspaper advertisements, "folders," the "Investors' Supplement," Poor's Manual, the Travellers' Official Guide, etc.

If the figures reported to the Commission are judicially noticed *as true*, what happens when, as here, they are contradicted by sworn evidence in the record? Can that be contradicted which is judicially known to be true? (See 109 U. S., at p. 253.)

It may perhaps be the better rule that the Court should avoid noticing this class of statistics on behalf of either party unless they were called to the attention of the Interstate Commerce Commission when the controversy was pending before that tribunal.

Being unaware of any authoritative decision as to the limit of judicial notice in these particulars, I ask leave to supplement Mr. Baxter's supplement by stating certain facts of general knowledge among railroad men, leaving the Court to notice them or not, as it may deem proper.

Statistics set forth by Mr. Baxter.—Mr. Baxter's figures are correctly transcribed from the report of the Commission's statistician, and represent statements made by the Alabama Midland railway officials in their statutory reports. The words "Went into Plant system this year" (referring to the fiscal year 1894) are not quoted from anything in the Commission's publication. They are based on the fact that the Plant system is referred to in the statistics for 1894 and 1895, and not in those of the previous years. They contradict the company's own witness, who shows that it has been in the "system" at least since November 1, 1892 (p. 351).

Prior to 1894 the "system" was not named in the reports of the statistician; but it existed nevertheless, and the Alabama Midland was a part of it, H. B. Plant being its president and M. F. Plant its vice-president.

The distinction is immaterial, as the Commission's order was made in the fiscal year 1894.

It will be noticed that the deficit for 1893 differs from that stated by the witness McLendon by about \$25,000. The reports to the Commission show a surplus of \$87,158 for 1896. These are not yet published in the form of an official report.

Incompleteness of official information.—If the Interstate Commerce Commission were dealing with this question, they would not be content with their own statistics, and for an obvious reason. The Plant system is a whole, and each part is worked for the benefit of the whole. The main line is the Savannah, Florida and Western road, to which the Alabama Midland is but a feeder. Whether or not the "Plant system," or Plant Investment Company, as a whole is a profitable business concern cannot be learned from the Commission's statistics, for the reason that it partly consists of railroads entirely situated in one State, while it also contains other lines of business. For instance, it runs a line of steamers from Mobile to Tampa and Key West and thence to Havana, Cuba; another line of steamers from Columbus, Georgia, to Apalachicola and return via the Chatta-

hoochee river (advertising to make the down trip in two days and the return trip in three days, connecting with various railroads, "river, fog, etc., permitting"); a line of steamers from Port Tampa to Port Antonio, Jamaica; a land department for the sale of town sites, township plats, etc., in Florida; and seven large hotels in that State. Poor's Manual for 1894 gives a statement of the net revenue and payments therefrom of all *railroads* comprising the Plant system, for the fiscal year ending June 30, 1893, which shows that, after paying all deficits on other lines, including interest on bonds, the Savannah, Florida and Western had nearly \$100,000 available for dividends.

The Alabama Midland being a mere feeder, it is immaterial to its managers whether or not it is given a fair division of through rates. Its bonds are guaranteed by the Savannah, Florida and Western. Its stock is controlled by the Plant Investment Company, which naturally does not care whether out of every dollar charged for freight from Montgomery to Savannah 25 cents is given to the Alabama Midland and 75 cents to the Savannah, Florida and Western, or *vice versa*. Moreover, assuming that under a fair division of through rates the Alabama Midland would still be unable to pay interest on its bonds, is that sufficient to deprive the localities along its line of the benefits of the interstate commerce act? It is very common that lines which are mere feeders for trunk lines show a heavy deficit, while they are profitable to the trunk line, which can well afford to pay the deficit in return for being fed.

The Alabama Midland itself has a branch line, and its return does not show whether the deficit is caused by the main line or the branch line. It may well be that, with a fair division of through rates from the S., F. & W., the main line would be able to pay the interest on its bonds (which seem to cover all cost of construction, being about \$15,000 per mile), and something on the stock besides, if it were not for the drain caused by the branch line. This would be another point which the Commission would look into.

Relevancy of investigation.—The whole investigation seems to be irrelevant in view of the fact that no figures are given us which bear upon the actual loss of gross earnings which would be caused by enforcing the first four orders of the Commission, while we are shown that the loss by enforcing the fifth and sixth orders of the Commission would be under, and probably very far under, \$7,500—a trivial sum in view of the \$490,000 gross earnings of the road in 1893; the \$548,000 gross earnings in 1894; the \$531,000 gross earnings in 1895, and the \$608,000 gross earnings in 1896. Even this slight loss might be diminished by a policy more favorable to building up the local traffic of the railroad.

Respectfully submitted.

EDWARD B. WHITNEY,
Assistant Attorney General.



No. 563. 203.

Reply Br. of Shaver for App.

Filed Mar. 19, 1897.
Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 563.

Office Supreme Court, U. S.
FILED.

MAR 19 1897

JAMES H. MCLENNAN,
CLERK.

THE INTERSTATE COMMERCE
APPELLANT,

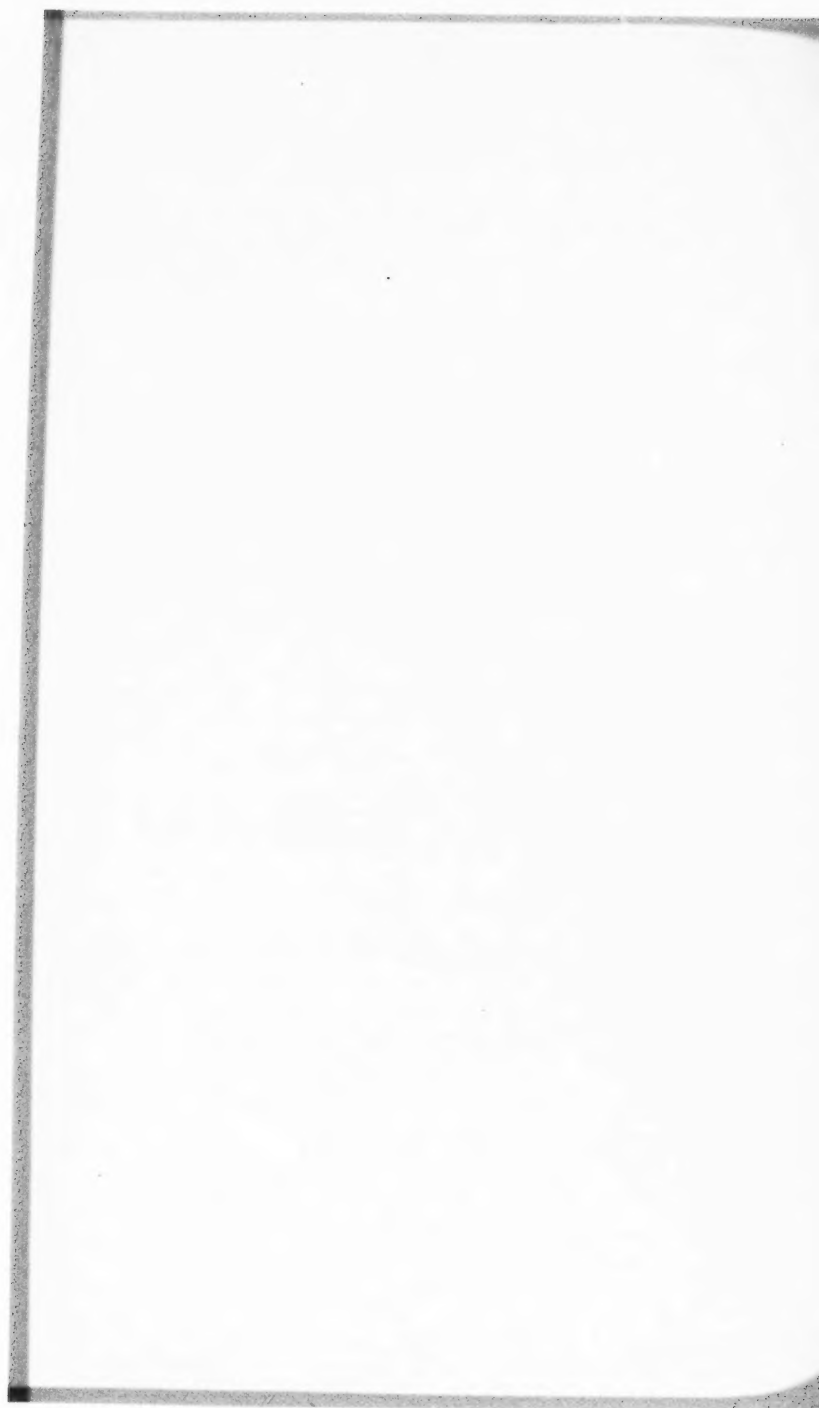
vs.

THE ALABAMA MIDLAND RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

Reply to Supplemental Brief of Counsel for Appellees.

L. A. SHAVER,
Of Counsel for Appellant.



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THE INTERSTATE COMMERCE COMMISSION,
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vs.

THE ALABAMA MIDLAND RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

Reply to Supplemental Brief of Counsel for Appellees.

I.

Counsel for the carriers filed during the concluding argument before this Court in this case a supplemental brief purporting to set forth statistics as to the earnings and

operating expenses of the Alabama Midland Railway Company for certain years.

These statistics for the years ending, June 30, 1892, and, June 30, 1894, were called for by counsel for the Commission on the examination of the witnesses for the carriers, but they failed to give them (8th cross-int., Record, p. 355). *The operations of the latter year show a surplus.*

Counsel for the Commission have had no opportunity to introduce testimony of their own or cross-examine witnesses of the roads in reference to these matters.

II.

There is a large discrepancy between the statistics for the year, 1893, given by the witness McLendon in his testimony (answer to 10th direct interrogatory, Record, p. 352) and the statistics set forth in the supplemental brief of the carriers, as shown below:

TESTIMONY OF MCLENDON.

<i>Gross or total earnings.</i>	<i>Total operating expenses.</i>	<i>Deficit.</i>
\$490,767.77	\$568,362.32	\$77,594.55

STATISTICS IN SUPPLEMENTAL BRIEF.

<i>Gross or total earnings.</i>	<i>Total operating expenses.</i>	<i>Deficit.</i>
\$490,768.00	\$542,861.00	\$52,093.00

Discrepancy, \$25,471.57.

If we may apply the maxim, *ex uno disce omnes*, the testimony of this witness on other matters may be presumed to be equally variant from the facts.

III.

The witnesses for the carriers, Lee McLendon, passenger and freight agent, and W. J. Haylow, master of transportation, of the Alabama Midland, both testify that the year 1893 was an "*exceptionally bad year as regards the Alabama Midland*," and that during the years, 1892 and 1893, the "*revenue of railroads throughout the country had fallen off materially because of the depressed financial condition of the country*," as follows:

"Answering the 9th cross: The revenues of railroads *generally throughout the country* have fallen off materially, according to my information and observation, during the last two or three years *on account of the depressed business and financial condition of the country*. I am not able to state whether the revenues of the Alabama Midland railway for the fiscal year 1892-'93 were reduced by cut rates or rate wars. *The fiscal year 1892-'93 was an exceptionally bad year.*" (Record, p. 271.)

"Answering the 9th cross: The revenue of railroads *generally throughout the country* has fallen off materially during the last two or three years *because of the depressed financial condition of the country*. I am unable to state whether the revenue of the Alabama Midland Railway Company for the fiscal year July, '92, to June, '93, was decreased by cut rates

and rate wars. The fiscal year July, '92, to June, '93, was an exceptionally bad year as regards the Alabama Midland Railway Co." (Record, p. 355.)

The deficits for the years 1892 and 1893 are attributed by these witnesses, *not to rates unremunerative in themselves*, but to want of business resulting from the "*depressed financial condition of the country*," which affected railroads generally.

IV.

Business losses, occasioned by the "depressed financial condition of the country," do not justify a carrier in charging the public (or any portion of the public) rates higher than are reasonable "*in view of the nature and value of the service rendered by the company*." (Covington and Lexington Turnpike Co. *vs.* Sanford *et al.*, decided by this Court, December 14, 1896.)

Such business losses cannot justify discrimination against Troy.

V.

The question is, Will the rates to Troy prescribed by the Commission be reasonably remunerative to the carriers "*in view of the nature and value of the service rendered?*"

(a.) Rates from the East:

On shipments from northeastern cities to Troy and Montgomery, where Troy is the shorter, and Montgomery the longer, distance point, the order of the Commission requires that the rates to Troy shall not be in excess of those to Montgomery.

The same rate to Troy as to Montgomery, where Troy is the shorter-distance point, will yield the carriers a higher rate per ton per mile to Troy than to Montgomery.

If the rate to Montgomery is reasonably remunerative to the carrier (which must be presumed in the absence of proof to the contrary), then the same rate to Troy for a shorter haul will be still more remunerative.

(b.) Rates from Cincinnati, Louisville, and St. Louis:

That the rates prescribed by the Commission from Cincinnati, Louisville, and St. Louis to Troy will be reasonably remunerative to the carriers appears from the facts stated by the Commission in its report. (Record, pp. 64, 65. See also pages 83, 84 of my original printed argument.)

VI.

The statistics in the supplemental brief show a surplus for the year 1891 and for the last two years named, 1894 and 1895; also, that in the whole six years named there was a

net surplus—this, notwithstanding depressed *business* conditions.

VII.

According to the estimate of McLendon, the receipts of the Alabama Midland for the year 1893 on through traffic from the East to Troy and *other stations* on that road east of Montgomery would have been \$7,448 less than they were if Troy and *such other stations* had been given rates relatively equal to the Montgomery rates. (Answers to 15th and 16th direct interrogatories, Record, p. 352.)

The possible loss of this sum on shipments to *all* stations east of Montgomery does not warrant the denial to Troy of rates not in excess of the Montgomery rates, the haul to Troy over the Midland road being *52 miles less than* to Montgomery.

VIII.

McLendon was asked on cross-examination if, in making the above estimate of loss, he had taken into consideration the fact, among others, that traffic to Troy and the other stations east of Montgomery on the Alabama Midland would probably be increased by relatively equal rates, and replied in substance that he had not.

7th cross-interrogatory, Record, p. 213.

Answer to 7th cross-interrogatory, Record, p. 324.

The stimulus given to business at Troy and other stations on the Alabama Midland road east of Montgomery by relatively equal and just rates would increase traffic to those stations largely and *correspondingly augment the revenue of the road*. "*That proposition has been so often practically demonstrated that no intelligent observer can reject it.*" (Aldace F. Walker—see original printed argument, pp. 57, 58.)

The prosperity of a road must be more dependent upon the general prosperity of communities and stations along its entire line than upon that of a few widely separated trade centers or distributing points. (See original printed argument, pp. 59-61.)

If the rates to Troy and other points on the Alabama Midland road are made relatively equal to the Montgomery rates, the traffic to Troy and those other points will be so much increased and the receipts therefrom of the road so much augmented, that instead of a loss there will be a gain in revenue.

IX.

In a brief filed March 8, 1897, a few days prior to the argument before this Court, by A. A. Wiley, Esq., counsel for the Alabama Midland and Savannah, Florida and Western Railway Companies, the bulk of the *alleged* facts stated are *outside the record*.

For example, under the title "Lower rates," on page 23, the rates set forth were not proven and are in no way referred to in the record or in any official publication known to us. They appear, moreover, to be irrelevant to any issue in this case.

The Court will notice that in only three instances in the entire brief are the pages of the record cited on which the *alleged facts* can be found.

On page 7 it is stated :

"Goods are *sometimes* sent through in the original cars and at other times transferred *en route* on through shipments from Louisville, Cincinnati, and St. Louis via Montgomery to Troy."

The inference from this might be that the through shipments to Troy were the exception, whereas the unanimous testimony of the witnesses for the carriers as well as for the Commission is that *through shipments to Troy without transfer are the rule*. Below are a few extracts from the testimony on this point.

B. M. Talbot, a wholesale grocery merchant at Troy, testifies :

"When class goods are shipped from Louisville, Cincinnati, St. Louis, and other Ohio River points via Montgomery to Troy, *they are shipped on a through bill of lading to Troy at an aggregate through rate*. Freight from Ohio River points to Troy *all come in car-loads, and it would not be necessary to transfer from car to car at Montgomery; it comes to Troy in the original car in which it is loaded at the initial point*." (Answer to third interrogatory, Record, pp. 223, 224.)

Charles Henderson, also a wholesale grocery merchant at Troy, testifies:

"When class goods are shipped from Louisville, Cincinnati, and St. Louis via Montgomery to Troy, *they are shipped under a through bill of lading and for an aggregate through rate.* There is no transfer of such freight at Montgomery from the cars in which it is brought to that city to the cars on the road of the Georgia Central or Alabama Midland Companies, but the car containing such freight is transferred from one road to the other, unless the through car is disabled, and then the transfer is made from the disabled car at the station at which the disabling occurs." (Third direct interrogatory, Record, p. 228.)

J. B. Corcoran, agent for the Alabama Midland railway at Troy, testifies:

"When class goods are shipped from Louisville, etc., to Troy via Montgomery, they are shipped under a through bill of lading at an aggregate through rate." (Third direct, Record, p. 233.) "I have never had any class goods shipped from Louisville, Cincinnati, and St. Louis, or other Ohio River points via Montgomery to Troy for my individual account, but in the line of my duties as agent have handled the bills of lading on such shipments, and have observed that the through rate on such shipments was specified in the bill." (First cross, Record, p. 233.)

Theodore Welch, general freight agent of the Louisville and Nashville road, testifies:

"On through shipments from Louisville, etc., to Troy via Montgomery, in case of car-loads, as corn, flour, meat, etc., the freight would go through to Troy in the same cars in

which it is brought to Montgomery. At least this is the general rule."

The evidence of a number of other witnesses is to the same effect, and there is none to the contrary. (Original printed argument, pp. 42-45, 48-51.)

On page 6 of Mr. Wiley's brief it is stated that—

"The proof shows that the rates complained of are approved by the railroad commissions of Alabama and Georgia."

The "rates complained of" are through rates on *interstate* commerce. State railroad commissions have no jurisdiction of through rates on interstate commerce or of any proportion of such through rates, and the proof shows that the Alabama railroad commission has only approved the rates between Montgomery and Troy as *local* rates on strictly local hauls, originating at Montgomery and terminating at Troy (answer to 6th cross-interrogatory, Record, pp. 274, 281). The reasonableness of those rates as local rates is not in issue, but only their reasonableness as proportions of through rates on interstate traffic to or from Troy. (See my original printed argument, pp. 41-43.)

Respectfully submitted.

L. A. SHAVER,
Of Counsel for Appellant.

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THE ALABAMA STATE ARCHIVES

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ALABAMA STATE ARCHIVES

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Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 563.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

v/s.

THE ALABAMA MIDLAND RAILWAY CO. et al., Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

I.

STATEMENT OF CASE.

This is an appeal by the Interstate Commerce Commission from a decree rendered by the United States Circuit Court of Appeals, Fifth Circuit, affirming a decree of the Circuit Court of the United States for the Middle District of Alabama.

Trans., pp. 408, 409.

The decree of the Circuit Court dismissed a petition filed in said Court, by said Commission, to enforce certain orders made by said Commission, in the case of the Board of Trade of Troy, Alabama, against the Alabama Midland Railway Company et al.

Trans., p. 134.

II.

PROCEEDINGS BEFORE THE COMMISSION.—PETITION.

The Board of Trade of Troy, Alabama, filed a petition before the Interstate Commerce Commission against the Alabama Midland Railway Company, the Central Railroad & Banking Company of Georgia and a number of other railroad companies,

than is charged and collected on such shipments from Montgomery aforesaid, *through* Troy to said ports."

3. "On shipments of cotton from Troy aforesaid, *for export* through the Atlantic seaports, to wit, Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate of charge to these ports, than is charged and collected on such shipments from Montgomery aforesaid."

4. "On shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments *through* Troy to Montgomery aforesaid."

5. "On class goods shipped from Louisville, Ky., St. Louis, Mo., or Cincinnati, O., to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Ga., and Eufaula, Ala."

6. "On shipments of cotton from Troy aforesaid, *through* Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per hundred pounds."

Trans., p. 69.

IV.

PROCEEDINGS IN THE CIRCUIT COURT.

The defendants conceiving that said order of the Commission was illegal, and desiring to obtain the opinion of the Court upon it, declined to obey it.

The Commission thereupon filed its petition in the Circuit Court against the same defendants, praying for an injunction to restrain them from further continuing in their violation of, and disobedience to said order; and that upon final hearing such injunction may be made perpetual.

Trans., pp. 1-10.

The proceedings had before the Commission were filed as exhibits to the petition in the Circuit Court.

The defendants filed their answers, or other defenses in the Circuit Court.

The testimony taken before the Interstate Commerce Commission was filed in the Circuit Court.

Trans., pp. 132-162.

The Commission took the depositions of thirteen witnesses in the Circuit Court.

Trans., pp. 219-268, 392-397.

And the defendants took the depositions of twenty-two witnesses in the Circuit Court.

Trans., pp. 268-391.

The cause was heard in the Circuit Court, upon the pleadings, testimony, and argument of counsel; and upon consideration thereof it was ordered and decreed that the cause be dismissed.

Trans., p. 124.

A written opinion was filed by Hon. John Bruce, Judge.

Trans., pp. 120-124.

The Commission prayed and obtained an appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

Trans., pp. 125, 126.

V.

PROCEEDINGS IN THE CIRCUIT COURT OF APPEALS.

The cause was heard in the Circuit Court of Appeals; and the decree of the Circuit Court was affirmed.

Trans., p. 408.

Judge McCormick delivered the written opinion of the Court.

Trans., pp. 412-419.

The Interstate Commerce Commission prayed and obtained an appeal to this Court.

Trans., p. 412.

VI.

STATEMENT OF FACTS.

TROY, ALABAMA.

Troy is situated at the intersection of the Alabama Midland Railway, which is a part of the Plant System, and the Mobile & Girard Railroad, which is a part of the Georgia Central System.

There is no other railroad at Troy; and it has no water transportation.

T. H. Moore, Trans., p. 221.

B. M. Talbott, Trans., p. 224.

Jacob Greil, Trans., p. 283.

M. B. Houghton, Trans., pp. 286, 287.

W. F. Vandiver, Trans., p. 291.

H. M. Hobbie, Trans., p. 298.

It is about fifty-two miles east of the Alabama River.

Trans., p. 55, left col.

And it is about ninety miles west of the Chattahoochee River.

W. R. Moore, Trans., p. 318.

Its population is between 3,000 and 4,200.

T. H. Moore, Trans., p. 221.

B. M. Talbott, Trans., pp. 224, 225.

M. B. Houghton, Trans., pp. 286, 287.

H. M. Hobbie, Trans., p. 298.

There are between 35,000 and 40,000 bales of cotton handled at Troy annually.

B. M. Talbott, Trans., p. 225.

T. H. Moore, Trans., p. 222.

There are about eighty firms engaged in general merchandise and groceries. Five of them are wholesale and retail combined. There is only one firm that is a strictly wholesale house. The remainder are retail houses.

B. M. Talbott, Trans., pp. 225, 224.

Jacob Greil, Trans., p. 283.

The manufacturing enterprises of Troy consist of 1 cotton mill, 1 fertilizer factory, 1 oil mill, 2 saw mills, 1 furniture fac-

tory, 1 ice factory, 1 machine shop, 1 water works, 1 electric light plant, and 1 compress.

B. M. Talbot, Trans., p. 224.

The volume of trade of Troy, yearly, is about two and a quarter million dollars.

B. M. Talbott, Trans., p. 225.

VII.

MONTGOMERY, ALABAMA.

Montgomery is situated, practically, at the head of navigation on the Alabama River. It has the following independent trunk lines or systems of railroads, viz.:

1. The Alabama Midland Railway which is a part of the Plant System.
2. The Louisville & Nashville Railroad.
3. The Georgia Central Railroad.
4. The Western Railway of Alabama.
5. The Savannah, Americus & Montgomery Railway.
T. H. Moore, Trans., p. 221.
M. B. Houghton, Trans., p. 286.
W. F. Vandiver, Trans., p. 291.
H. M. Hobbie, Trans., p. 298.

The Western Railway of Alabama runs from Selma, Ala., via Montgomery, to West Point, Ga.; and the Louisville & Nashville Railroad, runs from Cincinnati and St. Louis, via Montgomery, to New Orleans. The result is that though there are but five independent railroad systems at Montgomery, the railroads of those systems radiate from Montgomery in seven directions and make Montgomery an important railroad center.

H. M. Hobbie, Trans., p. 298.

M. B. Houghton, Trans., p. 286.

W. F. Vandiver, Trans., p. 291.

The population of Montgomery is between 30,000 and 35,000.

M. B. Houghton, Trans., p. 286.

H. M. Hobbie, Trans., p. 298.

There are between 130,000 and 175,000 bales of cotton handled at Montgomery annually.

T. H. Moore, Trans., p. 221.

A. M. Baldwin, Trans., p. 306.

W. F. Vandiver, Trans., p. 291.

H. M. Hobbie, Trans., p. 298.

M. B. Houghton, Trans., p. 286.

There are 563 mercantile and industrial firms in Montgomery. Trans., p. 158.

Her wholesale and retail merchants are very largely engaged in all lines and classes of business; reaching out not only into Alabama, but also into the States of Georgia, Florida and Mississippi.

W. F. Vandiver, Trans., p. 290.

H. M. Hobbie, Trans., p. 298.

The wholesale and retail trade and commerce of Montgomery is estimated as high as \$40,000,000.

M. B. Houghton, Trans., p. 286.

H. M. Hobbie, Trans., p. 298.

Montgomery has about 115 manufacturing establishments of various kinds, as estimated. She manufactures beer, soap, ice, cars, fertilizers, cotton seed oil, cotton seed meal, confectioneries, barrels, engines, cane mills, cotton presses, wagons, buggies, sacks, brooms, and various other articles.

M. B. Houghton, Trans., p. 286.

She has three large compresses for cotton.

W. F. Vandiver, Trans., pp. 290, 291.

H. M. Hobbie, Trans., p. 299.

She also has three cotton factories whose headquarters are in the city.

H. M. Hobbie, Trans., p. 299.

The tonnage for the year ending March 1, 1892, received by the various railroads at Montgomery *proper*, was 18,829,877 lbs. The tonnage of West, and Southwest freight, received for Montgomery *and connections*, during said year, was 647,880,688 lbs., or 21,596 car loads.

Trans., p. 158.

The business on the Alabama River, according to the report of the United States engineer, for the year 1891, was 52,349 bales of cotton, and 44,500 tons of other freight, carried by boat. The value of the commerce on said river for 1891 was \$8,175,650.

Trans., p. 159.

VIII.

COLUMBUS, GEORGIA.

Columbus, Ga., is situated on the Chattahoochee River. Its population by the Census of 1890, was 18,650. There are the following rail lines at Columbus:

The Central Railroad, whose lines extend northwardly, north-westwardly, westwardly, southwestwardly, eastwardly, and south-eastwardly.

The Columbus Southern, whose line extends southeastwardly.

The Georgia Midland & Gulf Railroad, whose line extends northeastwardly.

The Chattahoochee River runs southwardly to the gulf at Apalachicola, and is navigable for steamboats the year round.

W. R. Moore, Trans., p. 319.

J. Joseph, Trans., p. 323.

IX.

EUFULA, ALABAMA.

Eufaula is situated on the Chattahoochee River about 105 miles south of Columbus, and about 255 miles north of Apalachicola.

J. Joseph, Trans., p. 323.

The Central Railroad of Georgia crosses the Chattahoochee River at Eufaula, and from that point one of its lines runs north-westwardly; one of them runs southwestwardly; and one of them runs eastwardly.

By means of steamboats on the Chattahoochee River, Eufaula is connected with the system of railroads centering at Columbus.

Eufaula also connects by steamboats with the Savannah, Americus & Montgomery Railway, which crosses the Chat-

hoochee River between Eufaula and Columbus. That railway extends northwestwardly to Montgomery, Alabama; and eastwardly in the direction of Savannah.

Eufaula also connects by steamboats with the Alabama Midland Railway, which crosses the Chattahoochee River below Eufaula, and which runs northwestwardly to Montgomery, Ala., and southeastwardly to Bainbridge, Ga.

Eufaula also connects at River Junction with the Louisville & Nashville Railroad, which runs eastwardly to Pensacola, Mobile and New Orleans; and at the town of Chattahoochee, opposite River Junction, boats from Eufaula connect with the Savannah, Florida & Western Railway, running northeastwardly to Savannah, and with the Florida, Central & Peninsula Railroad running eastwardly to Jacksonville.

At Apalachicola, Fla., steamboats from Columbus and Eufaula connect with ocean and gulf steam and sail vessels.

R. Q. Edmonson, Trans., 348.

J. W. Tullis, Trans., p. 309.

J. G. Guice, Trans., p. 335.

The population of Eufaula and its suburbs is between 6,000 and 7,000.

A. Berringer, Trans., p. 326.

John O. Martin, Trans., p. 313.

J. G. Guice, Trans., p. 336.

R. Q. Edmonson, Trans., p. 348.

The amount of cotton annually handled at Eufaula is between 40,000 and 50,000 bales.

J. G. Guice, Trans., 336.

R. Q. Edmonson, Trans., p. 348.

There are at Eufaula the following manufactories: 1 oil mill, 2 cotton mills, 1 sash, door and blind factory, 2 carriage and wagon factories, 1 milling business, 1 gas works, 1 electric light works, 1 bagging factory, 1 ice factory, 2 brick plants, 1 marble works, 1 guano factory, 1 bottling works, and 1 compress, employing in all between 500 and 700 hands.

R. Q. Edmonson, Trans., p. 348.

J. G. Guice, Trans., p. 336.

A Berringer, Trans., p. 326.

John O. Martin, Trans., p. 313.

X.

THE ALABAMA RIVER—PERIOD OF NAVIGATION.

The Alabama River is navigable every month in the year by steamboats between Montgomery and Mobile; but for two months in the year it is navigable only by very light draft boats and barges.

T. H. Moore, Trans., p. 220.

Jacob Greil, Trans., pp. 282, 283.

M. B. Houghton, Trans., p. 285.

W. F. Vandiver, Trans., p. 289.

The average time required for a boat to go from Montgomery to Mobile and return is one week.

T. H. Moore, Trans., p. 220.

Jacob Greil, Trans., pp. 282, 283, 284.

M. B. Houghton, Trans., p. 285.

W. F. Vandiver, Trans., p. 292.

H. M. Hobbie, Trans., p. 297.

Three steamboats are run regularly during the summer months, arriving at Montgomery every Tuesday, Thursday, and Friday, leaving Mobile every Monday, Tuesday, and Saturday, each making the round trip once during the week. In the winter time a fourth boat is run during the busy season.

W. F. Vandiver, Trans., p. 289.

The time above stated, as required for a boat to go from Mobile to Montgomery and return, includes making all the landings and attention to a large local business. If a boat were run through without doing local business it could easily make two trips per week.

M. B. Houghton, Trans., p. 285.

Jacob Greil, Trans., p. 283.

W. F. Vandiver, Trans., p. 292.

XI.

THE ALABAMA RIVER—NUMBER OF STEAMBOATS.

There are four steamboats running on the Alabama River, viz.: "Nettie Quill," 400 tons; "Carrier," 200 tons; "Tinsie Moore," 200 tons; "D. L. Tallie," 400 tons. There is also one other steamer, the "Alto," 400 tons, which is not in service in times of low water.

W. F. Vandiver, Trans., p. 293.

T. H. Moore, Trans., p. 220.

H. M. Hobbie, Trans., p. 297.

Said steamboats are owned and operated by the following lines, viz.:

The People's Line, owned by merchants and property owners in Montgomery and Selma, operates the "Tinsie Moore."

The Quill Line, owned by a private company in Mobile, operates the steamboats "Nettie Quill" and "Carrier."

Two citizens of Mobile own and operate the steamboat "Alto."

W. F. Vandiver, Trans., p. 289.

In the event it should become necessary, on account of the high rail rates, all boats necessary to do the bulk of the business done at Montgomery, could be procured for the river service; and all vessels necessary in connection with said river boats, for ocean traffic, could be obtained.

Jacob Greil, Trans., p. 285.

In the event rail rates should be advanced, or any unfair discrimination should be made against Montgomery, it is practicable to obtain all the steamboats necessary to do all the business from the Eastern and Western points to Montgomery; and vessels can be obtained to come from foreign ports to Mobile.

M. B. Houghton, Trans., p. 288.

XII.

THE EFFECT OF THE NAVIGABILITY OF THE ALABAMA RIVER UPON RAILROAD RATES AT MONTGOMERY.

In 1886, the Merchants of Montgomery, on account of the high rates enforced at Montgomery, as compared with Mobile, organized a stock company in Montgomery, with a capital of \$35,000, and bought the steamers "Alabama" and "Jewel," having each a capacity of 400 tons. They ran on the Alabama River for two years, until they succeeded in securing an adjustment of rates more satisfactory to them, but still not such rates as placed them on an equality with Mobile.

W. F. Vandiver, Trans., p. 289.

During that period, said steamboats did a flourishing business, and made money until the rail rates were reduced to Montgomery to such a point as compared with Mobile, that there was not margin enough to sustain them; and they eventually quit the business; but not until after they had won their fight, and forced the railroads to reduce their rates to Montgomery.

W. F. Vandiver, Trans., p. 293.

T. H. Moore, Trans., p. 221.

Jacob Greil, Trans., p. 282.

During that period, the largest proportion of shipments to Montgomery came via Mobile to Montgomery by boats. When the railroad rates were reduced to a point satisfactory to the merchants at Montgomery such shipments again went to the railroads; and since then comparatively little *through* business has been done by the boats.

Jacob Greil, Trans., p. 285.

In 1890 the Montgomery merchants were advised that the railroads were agitating the question of increasing the rates to Montgomery; and becoming alarmed, lest it might be done, they decided to organize what is known as the People's Line, buy the steamer "Tinsie Moore," and place her on the Alabama River, to protect the interests of the Montgomery merchants, in case an emergency should arise that would make her use necessary. Said boat is and will be retained in the Alabama River.

W. F. Vandiver, Trans., pp. 289, 290, 293.

The Alabama River is a competitor against the rail rates at Montgomery.

T. H. Moore, Trans., p. 221.

There is organized water opposition to the railroads on the Alabama River, both from the East and the West.

W. F. Vandiver, Trans., p. 290.

The fact that the Alabama River is navigable for steamboats between Montgomery and Mobile, compels the railroads to reduce their rates in proportion to the Mobile rates for the purpose of taking business away from the boat lines. The rates from New York, Cincinnati, St. Louis, New Orleans, or any other point to Montgomery, can never materially exceed the rates from those points to Mobile, plus the steamboat rates from Mobile to Montgomery.

T. H. Moore, Trans., p. 220.

The fact that the Alabama River is navigable for steamboats between Montgomery and Mobile, has the effect of restraining railroads from exacting undue rates from Montgomery merchants.

H. M. Hobbie, Trans., p. 297.

It has the effect of enabling shippers to send their freight by river at low rates, and of keeping down the rates charged by the railroads between those places.

J. H. Clisby, Trans., p. 303.

It is the only cause of keeping down the rates charged by railroads between those two cities.

Jacob Greil, Trans., p. 282.

The rail rates between those two cities are lower than formerly, and the reduction has been caused by water competition.

W. F. Vandiver, Trans., p. 290.

The fact that the Alabama River is navigable by steamboats between Montgomery and Mobile has the effect of making the rates charged by railroads between those points lower than they otherwise would be.

M. B. Houghton, Trans., p. 285.

The presence and use of steamboats in the Alabama River prevent the railroads from advancing rates.

W. F. Vandiver, Trans., p. 290.

In case the railroads, at any time, should increase their rates, a large proportion of the through business, both from the East and West, would again go to the boats.

Jacob Greil, Trans., p. 285.

And the through business which the boats would then receive would maintain them.

Jacob Greil, Trans., p. 284.

The Rates between Montgomery and Mobile are lower than rates from either Mobile or Montgomery to many intermediate points (where there is no competition), and even this does not secure all the business to the rail line; because the boats haul freight from Mobile to Montgomery and Montgomery to Mobile cheaper than the established rail rates. Notably, lately there has been considerable cotton-seed oil and meal hauled by boat from Montgomery to Mobile.

W. F. Vandiver, Trans., p. 290.

There are at present, and have been for a number of years, many thousand bales of cotton shipped out of Montgomery by river via Mobile, and thence by rail to New Orleans. This is being done to a considerable extent even with the present adjustment of rates.

W. F. Vandiver, Trans., p. 291.

XIII.

SHIPMENTS FROM NEW YORK, BALTIMORE AND OTHER NORTH-EASTERN POINTS TO MONTGOMERY VIA MOBILE AND THE ALABAMA RIVER.

Shipments have been received by river at Montgomery which came via Mobile, and which originated in Boston, New York, Philadelphia, Baltimore, and other eastern cities. Some of them from the East came by the "Benner Line" to Mobile by schooner, and a good many are made from the East to Savannah (by water) from Savannah to Mobile by rail, and from Mobile to Montgomery by river. This is done very often to get the benefit of cheaper rates; it being cheaper to ship from Savannah by rail to Mobile, and thence by river to Montgomery, than to ship by rail direct to Montgomery.

T. H. Moore, Trans., p. 220.

Such shipments consisted of dry goods, boots and shoes, starch, snuff, soap, coffee, etc.

T. H. Moore, Trans., p. 222.

They also consisted of sugars, spices, peppers, shot, mackerel, canned goods, etc.

Jacob Greil, Trans., pp. 282, 283.

A certain merchant at Montgomery claims that on account of high rail rates in 1886, he began shipping all goods, such as coffee, sugar, syrup, bagging and ties, case goods, etc., coming from New York, Philadelphia, Boston, and other eastern points, via Mobile, and from there to Montgomery by river. Such shipments came every two weeks and continued for two years.

H. M. Hobbie, Trans., pp. 297, 299.

Another merchant at Montgomery states that he has received at Montgomery shipments by river which came via Mobile from Boston, New York, Philadelphia, Baltimore, and other eastern cities; that said shipments extended over a period of some two or three years, and that he is making such shipments now by sailing vessels to Mobile and by steamboats to Montgomery; though not in such large quantities as he did formerly.

Jacob Greil, Trans., p. 282.

Another merchant at Montgomery states that except the last year preceding the taking of his deposition, he had shipped large quantities of bagging, ties, coffee, sugar, soap, and case goods generally, from New York, Boston, Philadelphia, Baltimore, and other Eastern cities, by steamboat to (from?) Mobile Ala.; that the shipments at the time he gave his deposition (1894) were very considerable, and were growing larger all the while on account of the great discrepancy in the rate to Mobile, and the low rate by the Alabama River; and that such shipments were made by sailing vessels (Benner Line).

W. F. Vandiver, Trans., p. 289.

In 1894 the question was being agitated by parties with ample capital to establish a line of steamers between Boston and New York to Mobile direct. In 1886, when there was a steamship line between New York and Mobile, the through rate to Montgomery on first-class was 55 cents per 100 against an all-rail rate of \$1.14. Should that company be established and the old rates be re-established, the rail lines would have to largely reduce their

present rates or the business would go to Montgomery entirely by the water route.

W. F. Vandiver, Trans., pp. 293, 294.

It is also a fact that Mobile is fast forging her way to the front as a port of entry for large vessels.

H. M. Hobbie, Trans., p. 299.

XIV.

SHIPMENTS FROM LOUISVILLE, ST. LOUIS, CINCINNATI AND OTHER WESTERN POINTS TO MONTGOMERY, VIA MOBILE AND THE ALABAMA RIVER.

A merchant at Montgomery states that several years ago, when there was such a great difference in the rates of freight between Montgomery and Mobile, the merchants of Montgomery put two steamers on the Alabama River, and ran them between Montgomery and Mobile. His house shipped a large amount of goods from the West via Mobile, and upon said boats to Montgomery. Said shipments consisted of flour, grain, oats, corn, flasks, whiskeys, and a great many articles of merchandise. Said shipments comprised many car loads, and came by nearly every boat. They came from Peoria, Ill., Cincinnati, Chicago, Louisville, and points in Indiana.

Jacob Greil, Trans., pp. 281, 282, 283.

A manager of steamboats at Montgomery states that he has received upon his boats at Mobile, and brought by river to Montgomery, shipments from points west of Mobile; that said shipments have been made every trip that his boats make, more or less; such trips being made once a week.

T. H. Moore, Trans., p. 220.

Said shipments came from Louisville, Cincinnati, St. Louis, Chicago, and all points in the West. They consisted of staves, beer in casks, empty bottles, nails, grain, flour, meal, Western produce, and other articles.

T. H. Moore, Trans., p. 222.

A wholesale grocer at Montgomery states that he has received shipments by river at Montgomery, which came via Mobile, from points west of Mobile. They consisted of large quantities of sugar, molasses, canned goods, etc., received from New Orleans.

One of them consisted of fifty hogsheads of sugar, shipped by water from New Orleans to Mobile and up the river to Montgomery, saving a considerable difference in freight as compared with the all-rail route, even after paying the insurance. At various times, in comparatively late years, he has received large shipments of grain, flour, lard and other western produce from Cincinnati, St. Louis and Louisville, and other points in the West; all of which came via Mobile, and thence to Montgomery by river.

H. M. Hobbie, Trans., pp. 296, 297.

Another wholesale grocer at Montgomery, states that every year since he has been in business, he has received more or less freight from New Orleans and Western points, such as St. Louis, Louisville, Chicago, Milwaukee, and Missouri River points, by steamers on the Alabama River. The shipments from New Orleans consisted of sugar, molasses and other articles, bought in New Orleans. From the West he has within the last comparatively few years received a great deal of flour, grain, and other Western produce. On one occasion several years ago he bought (brought) a thousand barrels of flour by the way of Mobile, in one shipment. It has not been uncommon to receive several car loads of sugar from New Orleans, on account of the rate to Mobile, plus the low rate to Montgomery by the Alabama River. The movement by Mobile and river to Montgomery is more or less continuous.

W. F. Vandiver, Trans., pp. 288, 289, 291.

XV.

SHIPMENTS OF COTTON FROM MONTGOMERY BY RIVER TO MOBILE FOR EXPORT.

During the cotton season of 1893, on account of an increase in rates by rail to Atlantic ports on cotton, a large amount of cotton was shipped from Montgomery to Mobile by river for export.

J. H. Clisby, Trans., p. 305.

A line of Liverpool steamers has already been established to transport cotton and other commodities from Mobile to European cities. One line of steamers (steamboats) is offering to transport cotton from Montgomery to Mobile at 65 cents per bale,

including insurance. This is a saving of about 85 cents per bale as compared with the rail route.

H. M. Hobbie, Trans., pp. 299, 300.

XVI.

THE EFFECT OF INCREASING THE RAIL RATES ON CLASS GOODS FROM NEW YORK, BALTIMORE, AND OTHER NORTHEASTERN POINTS, TO MONTGOMERY, SO AS TO MAKE THEM THE SAME AS THE RATES TO TROY.

One of the orders made by the Commission directs the defendants to make "on shipments of class goods from New York, Baltimore, or other Northeastern points, to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid."

Trans., p. 69.

The "Sea and Rail" rates, in cents per 100 lbs., from New York are:

Classes.	1	2	3	4	5	6
To Troy.....	136	117	103	89	74	61
To Montgomery.....	114	98	86	73	60	49
Difference	22	19	17	16	14	12

Trans., p. 55, left col.

If the object of the Commission was merely to give to Troy the same rates as may obtain to Montgomery, it can be done either by reducing the Troy rates; or by increasing the Montgomery rates by the amount of the above difference. But the effect of such an increase in the rates from New York to Montgomery would be to very greatly increase the shipments of such freight from New York to Mobile by ocean. It would give the boats upon the Alabama River all they would want to do in carrying freight between Mobile and Montgomery; and the river traffic would be largely increased.

T. H. Moore, Trans., p. 221, Ans. No. 9.

M. B. Houghton, Trans., p. 286, Ans. No. 9.

H. M. Hobbie, Trans., p. 297, Ans. No. 8.

W. F. Vandiver, Trans., p. 290, Ans. No. 9.

In case the railroads at any time should increase their rate, a

large proportion of the through business both from the East and West would go to the boats.

Jacob Greil, Trans., p. 285.

M. B. Houghton, Trans., p. 288.

W. F. Vandiver, Trans., p. 293.

In 1886, there was a steamship line between New York and Mobile, and the rate through to Montgomery on first-class was 55 cents per 100 lbs. against an all-rail rate of \$1.14.

The question is now being agitated by parties with ample capital to establish a line of steamers between Boston, New York and Mobile direct.

If that line should be established and the old rate re-established, the rail lines would have to largely reduce their present rates or the business would go to Montgomery entirely by the water route.

W. F. Vandiver, Trans., pp. 293, 294.

XVII.

THE EFFECT OF INCREASING THE RAIL RATES, ON CLASS GOODS,
FROM LOUISVILLE, ST. LOUIS, AND CINCINNATI, TO
MONTGOMERY, SO AS TO MAKE THEM THE
SAME AS THE RATES TO TROY.

The rates, in cents per 100 lbs., from Louisville, Cincinnati and St. Louis, are higher to Troy than to Montgomery, by the following figures, viz.:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
	42	38	35	32	23½	21	17	19	13	12	21	26	26

Trans., p. 31, right col.

If a mere equality of rates as between Troy and Montgomery is all that is deemed important, it can be obtained either by reducing the Troy rates; or by increasing the Montgomery rates by the above figures. But the result of such an increase in the rates from Louisville, St. Louis and Cincinnati to Montgomery would be that all business for Montgomery would go to Mobile by rail or water, and come up the river to Montgomery on the boats now on the river.

T. H. Moore, Trans., p. 221, Ans. No. 10.

The immediate effect would be the movement of immense quantities of freight to Mobile, thence by the Alabama River to Montgomery. And the ultimate result would be simply to transfer the entire business, practically, via the Ohio and Mississippi Rivers to New Orleans, thence to Mobile, and up the Alabama River, and distribute it through the Montgomery section.

W. F. Vandiver, Trans., p. 290, Ans. No. 10.

M. B. Houghton, Trans., p. 286, Ans. No. 10.

Jacob Greil, Trans., p. 282, Ans. No. 10.

H. M. Hobbie, Trans., p. 297, Ans. No. 9.

The Commission did not order the Troy rates to be reduced to the Montgomery rates; but it did order them to be reduced to the Columbus and Eufaula rates.

Trans., p. 69.

The rates, in cents per 100 lbs., from Louisville are higher to Troy, than to Columbus and Eufaula, by the following figures, viz.:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
	33	38	32	27	19½	16	17	14	8	7	19	4	16

Trans., p. 65, left col.

XVIII.

THE EFFECT OF INCREASING THE RAIL RATE FROM MONTGOMERY TO ATLANTIC SEAPORTS ON COTTON FOR EXPORT.

The Commission states that on two shipments of cotton to Savannah for export, made the same day, the one from Montgomery (the longer distance point both over the Alabama Midland and the Georgia Central) and the other from Troy, the rate charged the Troy shipper is 45 cents and that charged the Montgomery shipper is only 32 cents. In other words, the Troy rate is 13 cents higher than the Montgomery rate.

Trans., p. 58, right col.

One of the orders made by the Commission, directs the defendants to make on "shipments of cotton from Troy aforesaid, for export through the Atlantic seaports, to wit: Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid."

Trans., p. 69.

If the object of the Commission was merely to give to Troy the same rate on export cotton as may obtain from Montgomery to the Atlantic seaports, it can be done either by reducing the Troy rate, or by increasing the Montgomery rate 13 cents per 100 lbs. But the effect of such an increase in the rail rate from Montgomery would be very decided towards inducing shipments of such cotton from Montgomery to Mobile by river, and thence by vessel from Mobile to European points, and there would be no difficulty in getting vessels to come into Mobile to get such cotton. The capacity of the river for such shipments would be from 15,000 to 20,000 bales per month; and it could be increased by the barge system to 30,000 or 40,000 bales per month. All cotton received at Montgomery could be shipped to Mobile by river, and that would be the effect of such an increase.

T. H. Moore, Trans., p. 221, Ans. No. 11.

M. B. Houghton, Trans., p. 286, Ans. No. 11.

W. F. Vandiver, Trans., p. 290, Ans. No. 11.

J. H. Clisby, Trans., p. 304, Ans. No. 11.

The advance of 13 cents per 100 lbs. on the Montgomery rate to Atlantic ports on cotton for export, would necessitate an advance of a like amount to the gulf ports, say New Orleans. And in the event of such an advance it would drive the business to the Alabama River via Mobile, and thence by rail to New Orleans. The ultimate result would be the establishment of a line of steamers direct from Montgomery to New Orleans, carrying cotton during the cotton season to New Orleans, and bringing back in return large quantities of western produce which would be distributed through the Montgomery section.

W. F. Vandiver, Trans., p. 291, Ans. No. 16.

XIX.

THE CHATTAHOOCHEE RIVER—PERIOD OF NAVIGATION.

The Chattahoochee River is navigable by steamboats between Eufaula and Apalachicola every month in the year.

J. G. Guice, Trans., p. 334.

Geo. C. McCormick, Trans., p. 339.

R. Q. Edmonson, Trans., p. 347.

Geo. H. Dent, Trans., p. 343.

A. Berringer, Trans., p. 325.

J. W. Tullis, Trans., pp. 308, 309.

It is also navigable for steamboats between Columbus and Apalachicola all the year.

W. R. Moore, Trans., p. 318.

XX.

THE CHATTAHOOCHEE RIVER—NUMBER OF STEAMBOATS.

There are four or five steamboats which run on the Chattahoochee River between Columbus, Eufaula and Apalachicola; but only three of them make regular trips.

John O. Martin, Trans., p. 312.

R. Q. Edmonson, Trans., p. 347.

The three steamboats now running between Columbus, Eufaula and Apalachicola are as follows, viz.: The "Flint," 135 to 150 tons; the "Naid," 130 to 150 tons; the "Bay City," 100 to 130 tons.

W. R. Moore, Trans., p. 317.

J. Joseph, Trans., pp. 321, 322.

Geo. H. Dent, Trans., p. 343.

One of the boat lines on the Chattahoochee River, to wit, the Peoples Line, is owned and controlled by the Plant System. This is the only line owned or controlled by the railroads.

The other boats are not owned by any railroad company; they do business with the railroads touching the river, but they are under a different management. The railroads referred to are as follows: The Central Railroad, the Georgia Midland & Gulf R. R., the Columbus Southern R. R., the Savannah, Americus & Montgomery Ry., the Alabama Midland Ry., the Pensacola & Atlantic R. R. (generally known as the Louisville & Nashville R. R.), and the Savannah, Florida & Western R. R.

The only connection between said railroads and said last mentioned boats is that of connecting carriers.

J. Joseph, Trans., p. 324.

W. R. Moore, Trans., p. 320.

It requires about three days to go from Columbus to Apalachicola; and about two and a half days to go from Eufaula to Apalachicola.

J. Joseph, Trans., p. 324.

The average time required for a boat to go from Columbus to Apalachicola and return is about five or six days in ordinarily high water, and in low water it takes seven days or more.

J. Joseph, Trans., p. 322.

W. R. Moore, Trans., p. 317.

The time required for a boat to go from Eufaula to Apalachicola and return is from three to five days.

J. G. Guice, Trans., p. 334.

W. R. Moore, Trans., p. 317.

J. W. Tullis, Trans., p. 308.

R. Q. Edmonson, Trans., p. 347.

Geo. H. Dent, Trans., p. 343.

Boats run from Eufaula to Apalachicola about three times a week, and arrive at Eufaula from Apalachicola about three times a week.

Geo. H. Dent, Trans., p. 346.

John O. Martin, Trans., p. 315.

R. Q. Edmonson, Trans., p. 350.

XXI.

THE EFFECT OF THE NAVIGABILITY OF THE CHATTAHOOCHEE RIVER UPON RAILROAD RATES AT COLUMBUS, GA., AND EUFAULA, ALA.

The fact that the Chattahoochee River is navigable by steamboats has the effect of preventing the railroads from overcharging in their rates between Eufaula, and Mobile, and New Orleans, and New York, and other Northeastern cities.

A. Berringer, Trans., p. 325.

It has a menacing effect upon the railroads centering at Eufaula.

Jno. O. Martin, Trans., p. 312.

The effect is to secure to Eufaula merchants a lower rate of freight by railroad between Eufaula and Mobile, New Orleans, and New York and other eastern cities, than they would otherwise have.

R. Q. Edmonson, Trans., p. 347.

J. W. Tullis, Trans., p. 309.

The effect is to fix the rates charged by railroads between Eufaula and New York, and other Northeastern cities.

Geo. H. Dent, Trans., p. 343.

The water competition actually controls and fixes the rail rates all the time.

J. W. Tullis, Trans., p. 312, Ans. No. 20.

The water advantages of Eufaula, while there is not much business now done by water, enable Eufaula merchants to get better railroad rates than they would otherwise have.

Geo. C. McCormick, Trans., p. 340.

The fact that the Chattahoochee River is navigable by steamboats has the effect of keeping down the rates charged by railroads between Eufaula, and Mobile, and New Orleans, and New York, and other Northeastern cities. In other words, it has the effect of maintaining reasonable rates by rail.

J. G. Guice, Trans., pp. 334, 335.

During the period from about 1875 to 1880 water competition at times actually controlled and fixed rail rates—that is, caused rail rates to be changed to compete with water rates from Eastern markets.

Jno. O. Martin, Trans., p. 317.

A. Berringer, Trans., p. 329.

The rates which are now charged between Eufaula, and Mobile and New Orleans, are higher than they have been at times, and lower than at other times, such rates having fluctuated from time to time on account of rate wars. The cause of these different reductions has been on account of the rate wars on the river, and on account of compromises made between the opposing lines.

J. G. Guice, Trans., p. 335.

The railroads have always adopted the rates of the water route, they having been established prior to the railroads reaching Eufaula.

Jno. O. Martin, Trans., p. 317.

The rates by river and rail are now approximately the same, and Eufaula merchants usually avoid the river route on account of the difficulty in handling and on account of the irresponsibility of the parties who handle the river traffic.

Geo. C. McCormick, Trans., p. 340.

If there were no railroads at Eufaula, it could get all of its

goods by river; and it could ship every bale of cotton or goods by river.

J. W. Tullis, Trans., p. 309.

XXII.

SHIPMENTS FROM NEW YORK, BALTIMORE, AND OTHER NORTHEASTERN POINTS, TO COLUMBUS AND EUFAULA, VIA APALACHICOLA, FLA., AND THE ALABAMA RIVER.

From 1864 up to 1875, boats on the Chattahoochee River hauled freight from or to Columbus or Eufaula via Apalachicola; which freight came to or from New York, or other Northeastern cities.

W. R. Moore, Trans., p. 330.

From the close of the war up to about 1872, there were frequent and continuous shipments of goods, which came via Apalachicola, and by river to Eufaula, from Boston, New York, Philadelphia, Baltimore, and other Eastern cities. All Eastern shipments came to Eufaula in that way from about 1865 to 1868.

Jno. O. Martin, Trans., p. 312.

They consisted of all manner of general merchandise.

Jno. O. Martin, Trans., p. 314.

The route by river from Apalachicola to Eufaula was the usual route over which shipments from Boston, New York, Philadelphia, Baltimore, and other Eastern cities, came to Eufaula from the close of the war up to about 1867. Since then, and after the railroads were fully reconstructed, the shipments have been principally by rail; but there have been occasional years when, on account of lower rates being furnished by water route, shipments were made principally or largely by said water route.

Jno. O. Martin, Trans., p. 314.

The usual route from New York to Eufala is now by the Ocean Steamship Co. from New York to Savannah, and from Savannah to Eufaula by rail. That route requires about six days.

Geo. C. McCormick, Trans. p. 341.

Shipments made from Boston, New York, Baltimore, and

Philadelphia by water to Savannah, and thence by rail to Eufaula, consume much less time than the usual all-rail route.

Geo. H. Dent, Trans., p. 345.

A shipment from New York, Boston, Philadelphia, and other Northeastern cities to Eufaula by all-water route, by steamer, would require about ten days, and by sailing vessels from two to three weeks, owing to the weather. It would require about a week for shipments from those points to Eufaula, by the usual rail route.

A. Berringer, Trans., p. 327.

Shipments from Boston, New York, Philadelphia, Baltimore and other Northeastern cities, via Apalachicola, by river to Eufaula, would require a transfer of the goods at Apalachicola from the ocean or gulf vessel to the river steamer, and this would involve expense and delay; but this expense and delay is taken into consideration in fixing the through rates.

A. Berringer, Trans., p. 327.

J. G. Guice, Trans., p. 338.

This expense is not as much, or at least not any more, than to transfer from a steamer to a railroad; inasmuch as one steamer runs up close to the other and the freight is discharged directly from one vessel to the other.

J. G. Guice, Trans., p. 337.

Jno. O. Martin, Trans., p. 315.

And on such shipments through bills of lading and rates would be given.

Jno. O. Martin, Trans., p. 315.

XXIII.

SHIPMENTS FROM LOUISVILLE, ST. LOUIS, CINCINNATI, AND OTHER WESTERN POINTS, TO COLUMBUS, AND EUFAULA, VIA APALACHICOLA, FLA., AND THE ALABAMA RIVER.

In former years Western freight went down the Mississippi River to New Orleans, and from there to Apalachicola, and from Apalachicola to Columbus and Eufaula, whereas it now comes direct by rail, and consequently requires much less expense in handling.

W. R. Moore, Trans., p. 318.

In 1864, and the following years up to 1875, steamboats on the Chattahoochee River hauled through freights from or to Columbus or Eufaula via Apalachicola, which freights came to or from Mobile, and New Orleans, and New York, or other North-eastern cities.

W. R. Moore, Trans., p. 320.

Said boats did, practically, all the business which was done between Columbus and Eastern and Western cities.

W. R. Moore, Trans., p. 320.

A dry goods merchant at Eufaula states that prior to the last ten or fifteen years he received shipments of goods at Eufaula which came via Apalachicola from Mobile and New Orleans. He shipped by that route, from New Orleans, molasses and all kinds of groceries, and from Mobile, principally, coffees. He dealt very largely at that time in groceries, and shipments by that route were quite large and frequent. He received shipments by nearly every boat that came to Eufaula; and the value of such shipments amounted, probably, to \$20,000 or \$30,000 per annum.

A. Berringer, Trans., p. 325.

Said shipments originated at Mobile, New Orleans, and St. Louis.

A. Berringer, Trans., p. 327.

A wharf owner and steamboat agent at Eufaula, states that from 1866 to 1867 he received numerous shipments of goods at Eufaula, which came via Apalachicola, from Mobile and New Orleans. Said shipments were frequent, and consisted of all Western products shipped to Eufaula and adjacent territory, in the years immediately succeeding the war.

John O. Martin, Trans., p. 312.

The route by river from Apalachicola to Eufaula was the usual route over which shipments were made from Mobile and New Orleans during the period from the close of the war up to 1872. Prior to the completion of the Montgomery and Eufaula Railroad all shipments from Mobile and New Orleans came by said water route; and after that road was completed, the rail route was the usual route for the receipt of shipments from said cities, the railroad company having adapted its rates to the water rates.

John O. Martin, Trans., pp. 314, 315

Shipments received by him from Mobile and New Orleans, via Apalachicola, by river, originated at Cincinnati, St. Louis, New Orleans, and Mobile.

John O. Martin, Trans., p. 315.

They consisted of Western products, such as meat, hay, corn, etc.

John O. Martin, Trans., p. 314.

Shipments from Ohio River points, via the Ohio and Mississippi Rivers, to New Orleans, and thence by water to Apalachicola, and thence by river to Eufaula, have to be transferred at New Orleans, from the Mississippi River steamer or vessel to the Gulf steamer or vessel, and at Apalachicola, from the Gulf vessel to the Chattahoochee River steamboat. These transfers would involve some additional expense and delay. But there is no great delay; and the expense is not as much, or at least not any more, than to transfer from a steamer to a railroad; inasmuch as one steamer runs up close to the other, and the freight is discharged directly from one vessel to the other.

J. G. Guice, Trans., p. 337.

As such shipments are made on through bills of lading, the expense of making said transfers would be taken into consideration in making the through rate.

Geo. H. Dent, Trans., p. 345.

John O. Martin, Trans., p. 315.

It would require from eight to twelve days for a shipment to be made from Louisville, Cincinnati, St. Louis, or other Ohio River points, to Eufaula by water; and it would require from five to twelve days for such shipment to be made by rail, or by the usual rail route: this is owing to the crowded state of affairs.

John O. Martin, Trans., p. 315.

A. Berringer, Trans., p. 327.

Or, as stated by another witness, taking into consideration the delays incident to the hauling of freight on railroads, there would be little difference in time. The usual time is about ten or fifteen days by rail, and it would be about the same by water.

J. G. Guice, Trans., p. 337.

XXIV.

SHIPMENTS OF COTTON FROM COLUMBUS AND EUFAULA VIA APALACHICOLA, FLA., FOR EXPORT.

The route from Eufaula to Apalachicola by river, was the only and usual route by which shipments to Mobile and New Orleans were made up to about 1867. After 1867, and up to about 1872 the shipments by that route were considerable. After 1872 the shipments by that route were irregular.

John O. Martin, Trans., p. 316, Ans. No. 14.

From 1866 to 1868 the shipments were frequent and in large quantities.

J. G. Guice, Trans., p. 334.

From 1866 to 1876, frequent shipments of cotton and other goods were made from Eufaula to Apalachicola. Boats were then running three times a week between Eufaula and Apalachicola, and shipments were made by every boat. The shipments were large, as all goods that were shipped from or to Eufaula came by that route.

John O. Martin, Trans., p. 312.

J. W. Tullis, Trans., p. 308.

The route from Eufaula by river to Apalachicola was the usual route for shipments of cotton to Mobile and New Orleans before the railroads were completed. After the construction of the railroads it was the usual route until the railroads furnished rates not greater than the water rates; and after that the shipments have usually been made by rail.

Very little of the cotton shipped from Eufaula to Mobile and New Orleans has gone by water since the Montgomery & Eufaula R. R. was constructed; for the reason that Eufaula shippers have been able since that time to procure the same rate from the railroad that they would have had to pay by the river route.

J. W. Tullis, Trans., p. 310, 311.

Since 1876 little, if any cotton, shipped from Eufaula by river has actually gone to or through Apalachicola. It has been taken up by the railroads (which cross the Chattahoochee River above Apalachicola) before reaching that point.

J. W. Tullis, Trans., p. 308.

A cotton shipper at Eufaula states that about seven or eight years ago he shipped about 2,000 bales of cotton at about one-half the usual rate by rail, because the river offered to take it for that rate. He also states that about four years ago he sent about 10,000 bales of cotton down the river; but before the season was over he stopped that class of shipments down the river, and sent them by railroad, because the railroads made rates satisfactory.

J. W. Tullis, Trans., pp. 312, 311.

Another cotton shipper at Eufaula states that at present he is making no shipments from Eufaula via Apalachicola to Mobile, because the present railroad rates are satisfactory, and the outlets to the seaboard are more convenient for the present volume of his business. But in seasons gone by, and up to as late as 1884, his firm had shipped over 15,000 bales by part river and part rail route; some going via Brunswick, some via Fernandino, some via Savannah, some via Jacksonville, and some via Mobile, Pensacola, and New Orleans. In 1884, he had arranged with a sailing vessel to take about 1,500 bales by Apalachicola; and when the railroads found it out, they gave him a satisfactory rate out through Savannah; and he had the sailing vessel changed from Apalachicola to Savannah, and loaded there.

J. G. Guice, Trans., p. 338.

For the last two or three years the cotton from the Eufaula territory all goes East, either for New England or Northern Canadian spinners, or for export to Europe.

J. W. Tullis, Trans., p. 311.

The distance by river from Columbus to Apalachicola is 360 miles. From Eufaula to Apalachicola the distance is stated to be from 255 miles to 275 miles. The distance from Columbus to River Junction, Fla., and to the town of Chattahoochee, Fla., is about 224 miles. From Eufaula to River Junction and to the town of Chattahoochee the distance is about 139 miles.

J. Joseph, Trans., p. 323.

W. R. Moore, Trans., p. 319.

From River Junction, the Louisville & Nashville Railroad runs westwardly to Pensacola, Mobile, and New Orleans; and from the town of Chattahoochee, Fla. (which is just across the river from River Junction), the Savannah, Florida & Western Railroad runs eastwardly to Jacksonville and Savannah, with connections to Brunswick, Fernandino, and Charleston; and the

Florida Central & Peninsula Railroad runs eastwardly to Jacksonville, Fernandino, and Savannah, with connections to Brunswick and Charleston.

Through bills of lading on shipments of cotton from Eufaula, by river, via Apalachicola, to Mobile or New Orleans can be obtained; and such bills of lading can be negotiated in bank.

J. W. Tullis, Trans., p. 311.

Through bills of lading can also be obtained, and negotiated in bank, on shipments of cotton from Eufaula, by river, via Apalachicola, to foreign ports.

J. G. Guice, Trans., p. 338.

R. Q. Edmonson, Trans., p. 350.

XXV.

THE HARBOR AT APALACHICOLA, FLA.

Though Apalachicola Harbor is now used principally for lumber, it was formerly the second or third port in the United States for cotton; and large quantities of cotton have been shipped out of there since the war.

J. G. Guice, Trans., p. 338.

Most of the cotton along the Chattahoochee, Chipola, Flint, and Apalachicola Rivers, and the country tributary thereto, was, during the years 1865, 1866, and 1867, brought to the town of Apalachicola by river steamers and carried out by sea-going vessels. It amounted to about 100,000 bales a year. A large amount of freight was brought into Apalachicola during those years; and such of it as was destined for interior points along the rivers, was carried by river steamers. From 1880 to 1993, inclusive, about 150 vessels came to the port of Apalachicola, annually; the exact number cannot be ascertained as many vessels are not required to report to the Custom House their arrival and departure.

J. E. Grady, Trans., p. 396.

Steamers and sail vessels are now plying between Apalachicola, Fla., and Mobile, Ala.

J. E. Grady, Trans., p. 396.

Sail vessels, and occasionally a steamer, call at Apalachicola

for lumber and timber bound for Northeastern cities; and they very often bring merchandise for Apalachicola, but none for interior points.

J. E. Grady, Trans., p. 396.

Steam and sail vessels, drawing $18\frac{1}{2}$ feet of water can enter the bay of Apalachicola, through the east pass, a distance of fifteen or twenty miles from the city. Vessels drawing 12 feet of water can enter the bay of Apalachicola, through the west pass, and anchor within four miles of the city. The distance from the city of Apalachicola to the different anchorages in the bay is from four to twenty miles. A barge towed by a steam tug can make the trip in from one to four hours. Some vessels bring goods from, and carry goods to Mobile and New Orleans; others bring and carry merchandise, such as lumber and general merchandise from, and to Northeastern cities, such as New York, Boston, etc. Goods destined to Mobile, New Orleans, or Northeastern cities, from Columbus and Eufaula, would be brought to Apalachicola by river steamers and transferred to the vessels in the bay by barges towed by tugs, or by lighters.

Shipments from Mobile and New Orleans, generally brought by vessels of light draft, can be transferred alongside the river steamers at Apalachicola.

J. E. Grady, Trans., pp. 395, 396.

Galveston steamers will stop at Apalachicola and take cotton for shipment to the North and East.

J. W. Tullis, Trans., p. 311.

Shippers at Eufaula have received propositions to put on steamers into Apalachicola to take their cotton and freight to any water points in the United States, or Europe, whenever they deem it necessary and can furnish freight sufficient to load the steamers.

J. G. Guice, Trans., pp. 337, 338.

XXVI.

THE EFFECT OF INCREASING THE RAIL RATES ON CLASS GOODS
FROM LOUISVILLE, ST. LOUIS, AND CINCINNATI, TO CO-
LUMBUS AND EUFULA, SO AS TO MAKE THEM
THE SAME AS RATES TO TROY.

One of the orders made by the Commission enjoins the de-
fendants to charge on "Class goods shipped from Louisville, Ky.,
St. Louis, Mo., or Cincinnati, Ohio, to Troy aforesaid, no higher
rate of charge than is now charged and collected on such ship-
ments to Columbus, Ga., and Eufaula, Ala."

Trans., p. 69.

The present rates from Louisville to Troy are higher than the
rates from Louisville to Columbus and Eufaula, by the following
figures :

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
	33	38	32	27	19½	16	17	14	8	7	19	4	16

Trans., p. 65, left col.

If a mere equality of rates as between Troy, Columbus, and
Eufaula, is the object aimed at by the Commission, it can be
attained either by reducing the Troy rates, or by increasing the
Columbus or Eufaula rates, by the above figures. But the effect
of such an increase in the Columbus and Eufaula rates would
be that shipments of freight would be made by boat upon the
Ohio and Mississippi Rivers from Louisville, Cincinnati, and
St. Louis, to New Orleans, thence by vessel to Apalachicola and
by steamboat to Eufaula. And if the present line of boats on
the Chattahoochee River should not be sufficient, or would not
accept rates for carrying freights with the other water lines, other
boats would at once be put upon the river.

Jno. O. Martin, Trans., p. 313.

R. Q. Edmonson, Trans., pp. 347, 348.

Geo. H. Dent, Trans., p. 344.

W. R. Moore, Trans., p. 318.

J. G. Guice, Trans., p. 335.

XXVII.

THE EFFECT OF INCREASING THE RAIL RATES FROM COLUMBUS AND EUFULA, TO NEW ORLEANS, ON COTTON FOR EXPORT.

One order of the Commission enjoins the defendants to charge "on shipments of cotton from Troy aforesaid, through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per 100 lbs."

Trans., p. 69.

The present rate on cotton from Troy to New Orleans is 68 cents per 100 lbs.

Trans., p. 59, right col.

The present rate on cotton from Columbus to New Orleans is 50 cents per 100 lbs.; and as Columbus is forty-two miles further than Troy from New Orleans, the Commission ordered that the through rate on cotton from Troy via Montgomery to New Orleans should not exceed 50 cents per 100 lbs.

Trans., p. 61, left col.

If a mere equality of rates as between Troy and Columbus to New Orleans is the object aimed at by the Commission, it can be attained either by reducing the Troy rate; or by increasing the Columbus rate from 50 cents to 68 cents per 100 lbs. This would involve an increase in the Columbus rate of 18 cents per 100 lbs.

But if the rail rates on cotton from Columbus and Eufaula to New Orleans should be increased 18 cents per 100 lbs. it would have the tendency to again open up the shipment of cotton by river to Apalachicola, and thence by vessel to New Orleans, and Eastern points.

W. R. Moore, Trans., p. 318, Ans. No. 9.

It would force shippers to ship cotton and other freights by river to Apalachicola, and thence by vessel to New Orleans.

A. Berringer, Trans., p. 326.

The effect would be the establishment of boat lines in opposi-

tion to the railroads for shipping cotton and other freight by Apalachicola to New Orleans by water.

J. G. Guice, Trans., p. 325.

Jno. O. Martin, Trans., p. 313.

Geo. H. Dent, Trans., p. 344.

J. W. Tullis, Trans., p. 309.

XXVIII.

THE EFFECT UPON THE REVENUE OF THE ALABAMA MIDLAND RAILWAY OF THE REDUCTION IN RATES ORDERED BY THE COMMISSION ON CLASS GOODS FROM NEW YORK, BALTIMORE, AND OTHER NORTHEASTERN POINTS, TO TROY.

The Commission ordered that on shipments of class goods from New York, Baltimore or other Northeastern points, the rates charged by the Alabama Midland Railway and its connections shall not be higher than the rates to Montgomery.

Trans., p. 69.

The "sea and rail" rates from New York to Troy and Montgomery, respectively, are as follows:

Classes.....	1	2	3	4	5	6
To Troy.....	136	117	103	89	74	61
To Montgomery.....	114	98	86	73	60	49
Difference.....	22	19	17	16	14	12

The above "difference" shows the amount of reduction ordered by the Commission upon each of the six classes of goods.

See Trans., p. 55, left col.

The complaint of the Board of Trade of Troy was filed before the Commission on June 29, 1892; and the case was decided by the Commission August 15, 1893.

Trans., p. 52.

For the fiscal year, July, 1892, to June, 1893, inclusive, the gross earnings of the Alabama Midland Ry. Co. were \$490,767.77.

The operating expenses during that period were \$568,362.34; deficit, \$77,564.57.

McLendon, Trans., p. 352.

The road was operated skillfully, economically and honestly; and all ordinary methods usually pursued by railroads in the procurement of a just and fair proportion of competitive traffic were employed by the officials of that road.

McLendon, Trans., p. 352.

The revenue derived by the Alabama Midland Ry. during the fiscal year July, 1892, to June, 1893, inclusive, from traffic from the East destined to local stations on that road, including Troy, etc., where the rates from the East to those stations were higher than the rates from the East to Montgomery, amounted to \$35,511.73.

If the Alabama Midland Ry. Co. had been compelled to accept from the East to those local stations, the proportions of through rates which it accepted from the East to Montgomery, it would have realized only \$28,062.91. In other words, if the order that was made by the Commission in this case reducing the rates from the East to Troy had been enforced, it would have reduced the revenue of the Alabama Midland Railway on traffic from the East alone \$7,448.82, for the year July, 1892, to June, 1893, inclusive.

McLendon, Trans., p. 352.

XXIX.

COMPETITIVE LINES FROM NEW YORK, BALTIMORE, AND OTHER NORTHEASTERN POINTS, TO MONTGOMERY.

The Commission reports the following through lines over which traffic is carried on through rates and through bills of lading, viz.:

1. Alabama Midland Ry., Montgomery to Bainbridge; Savannah, Florida & Western Railway, Bainbridge to Savannah; Ocean Steamship Co., Savannah to New York.

Trans., p. 55, left col.

2. Alabama Midland Railway, Montgomery to Bainbridge; Savannah, Florida & Western Railway, Bainbridge to Savannah; Merchants & Miners Transportation Co., Savannah to Baltimore.

Trans., p. 55, left col.

3. Georgia Central Railroad, Montgomery to Savannah; Ocean Steamship Co., Savannah to New York.

Trans., p. 55, left col.

4. Georgia Central Railroad, Montgomery to Savannah; Merchants and Miners Transportation Co., Savannah to Baltimore.

Trans., p. 55, left col.

5. Western Railway of Alabama, (and Atlanta & West Point Railroad), Montgomery to Atlanta; East Tennessee, Virginia & Georgia Railroad, Atlanta to Bristol; Norfolk & Western Railroad, Bristol to Hagerstown; Cumberland Valley Railroad, Hagerstown to Harrisburg; Pennsylvania Railroad, Harrisburg to New York.

Trans., p. 55, left and right col.

6. Louisville & Nashville Railroad, Montgomery to Birmingham; Alabama Great Southern Railroad, Birmingham to Chattanooga; East Tennessee, Virginia & Georgia Railroad, Chattanooga to Bristol; and thence over the Norfolk & Western Railroad and connections, from Bristol to New York, as in No. 5.

Trans., p. 55, right col.

7. Louisville & Nashville Railroad, Montgomery to Calera; East Tennessee, Virginia & Georgia Railroad, Calera to Bristol; and thence over the Norfolk & Western Railroad and connections, from Bristol to New York, as in No. 5.

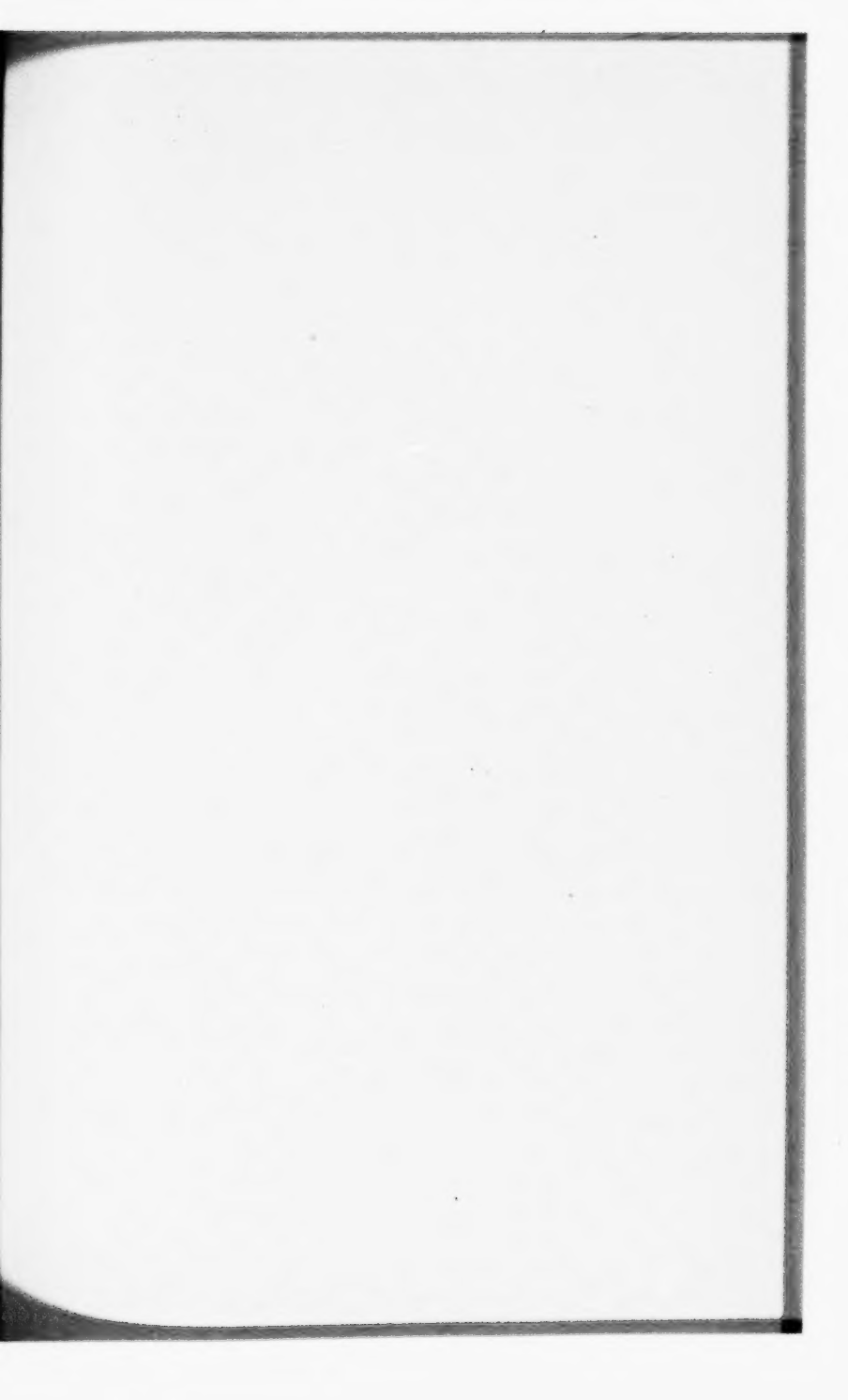
Trans., p. 55, right col.

8. Georgia Central R. R., Montgomery, via Columbus and Macon, to Chattanooga; East Tennessee, Virginia & Georgia R. R., Chattanooga to Bristol; thence over the Norfolk & Western R. R., and connections, from Bristol to New York, as in No. 5.

Trans., p. 55, right col.

In addition to the above lines mentioned by the Commission in its report, the following lines actually compete for the same traffic:

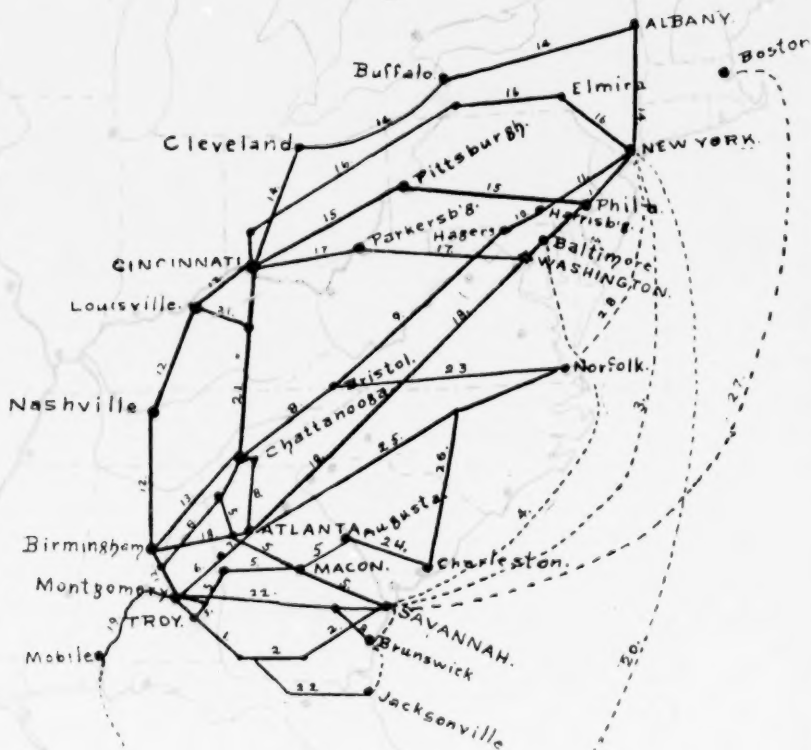
9. The several lines from Cincinnati and Louisville, to Montgomery, in connection with lines running to Cincinnati and Louisville, from Boston, New York, Philadelphia, Baltimore, and other Eastern points; such as the Boston & Albany R. R.,



INDEX TO DIAGRAM NO. 1.

1. Alabama Midland Ry.
2. Savannah, Florida & Western Ry.
3. Ocean Steamship Line.
4. Merchants' & Miners' Line.
5. Georgia Central Railroad.
6. Western Railway of Alabama.
7. Atlanta & West Point Railway.
8. East Tennessee, Virginia & Georgia Ry.
9. Norfolk & Western Railroad.
10. Cumberland Valley Railroad.
11. Pennsylvania Railroad.
12. Louisville & Nashville Railroad.
13. Alabama Great Southern Railroad.
14. New York Central Railroad.
15. Pennsylvania Railroad.
16. Erie Railroad.
17. Baltimore & Ohio Railroad.
18. Southern Railway.
19. Alabama River.
20. Sail and Steamship Lines.
21. Cincinnati, New Orleans & Texas Pacific Ry.
22. Savannah, Americus & Montgomery Ry.
23. Florida Central & Peninsula R. R.
24. Virginia & Tennessee Air Line.
25. South Carolina Railway.
26. Seaboard Air Line.
27. Atlantic Coast Line.
28. Clyde S. S. Line.
29. Old Dominion S. S. Line.

DIAGRAM No. 1.





New York Central R. R., Erie R. R., Pennsylvania R. R., and Baltimore & Ohio R. R.

Theo. Welsh, Trans., pp. 275, 276, Ans. No. 9.

10. The Western Railway of Alabama, and the Atlanta & West Point R. R., Montgomery to Atlanta; the Piedmont Air Line, now known as the Southern Ry., Atlanta to Washington.

Theo. Welsh, Trans., p. 276, Ans. No. 9.

11. Louisville & Nashville R. R., Montgomery to Calera, and Birmingham; Piedmont Air Line from Calera and Birmingham to Washington.

Theo. Welsh, Trans., p. 276, Ans. No. 9.

12. The Virginia, Tennessee & Georgia Air Line, via Norfolk, by water, and connecting railroads to Montgomery.

Theo. Welsh, Trans., p. 276, Ans. No. 9.

13. Various steamship lines to Charleston, Savannah, Brunswick and Jacksonville, and connecting railroads from those ports to Montgomery.

Theo. Welsh, Trans., p. 276, Ans. No. 9.

Diagram No. 1 sufficiently illustrates the competitive lines described above in this section:

14. And, in addition to the above, is the Alabama River, Montgomery to Mobile; steamers and sail vessels, Mobile to New York, etc.

XXX.

COMPETITIVE LINES FROM MONTGOMERY TO WEST POINT, VA., NORFOLK, CHARLESTON, SAVANNAH, AND BRUNSWICK.

The Commission reports the following roads as constituting through routes or lines:

1. The Alabama Midland Railway, Montgomery to Bainbridge; Savannah, Florida & Western Railway, Bainbridge to Waycross; Brunswick & Western Railway, Waycross to Brunswick.

Trans., p. 56, left col.

2. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Savannah; Charleston & Savannah Railway, Savannah to Charleston.

Trans., p. 56, left col.

3. The Western Railway of Alabama, and the Atlanta & West Point Railroad, Montgomery to Atlanta; the Richmond & Danville Railroad, Atlanta to West Point, Va.

Trans., p. 56, left col.

4. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Savannah; the Charleston & Savannah Railway, Savannah to Charleston; the Northeastern Railroad of South Carolina, the Wilmington, Columbia & Augusta Railroad, the Wilmington & Weldon Railroad, the Petersburg Railroad, the Richmond & Petersburg Railroad, and the Richmond & Danville Railroad, Charleston to West Point, Va.

Trans., p. 56, left col.

5. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Savannah; the Charleston & Savannah Railway, Savannah to Charleston; the Northeastern Railroad of South Carolina, the Wilmington & Weldon Railroad, and the Seaboard & Roanoke Railroad, Charleston to Norfolk.

Trans., p. 56, left col.



DIAGRAM No 2.



INDEX TO DIAGRAM NO. 2.

1. Alabama Midland Railway.
2. Savannah, Florida & Western Railway.
3. Brunswick & Western Railroad.
4. Charleston & Savannah Railway.
5. Western Railway of Alabama.
6. Atlanta & West Point Railway.
7. Richmond & Danville Railroad.
8. Northeastern R. R. of South Carolina.
9. Wilmington, Columbia & Augusta R. R.
10. Wilmington & Weldon Railroad.
11. Richmond & Petersburg Railroad.
12. Seaboard & Roanoke Railroad.
13. Georgia Central Railroad.
14. East Tennessee, Virginia & Georgia Ry.
15. Georgia Railroad.
16. South Carolina Railroad.
17. Seaboard Air Line.
18. Port Royal & Augusta Railroad.
19. Plant System in Florida. (To Phosphate Beds).
20. Savannah, Americus & Montgomery Ry.

6. Georgia Central Railroad, Montgomery to Macon; the East Tennessee, Virginia & Georgia Railway, Macon to Brunswick.

Trans., p. 56, left col.

7. Georgia Central Railroad, Montgomery to Savannah; Charleston & Savannah Railway, Savannah to Charleston.

Trans., p. 56, left col.

8. Georgia Central Railroad, Montgomery to Macon; Georgia Railroad, Macon to Augusta; South Carolina Railroad, Augusta to Charleston.

Trans., p. 56, left col.

9. Georgia Central Railroad, Montgomery to Atlanta; the Richmond & Danville Railroad, Atlanta to West Point, Va.

Trans., p. 56, left col.

10. The Georgia Central Railroad, Montgomery to Savannah; the Charleston & Savannah Railway, Savannah to Charleston; and the roads composing the Atlantic Coast Line, and the Richmond & Danville Railroad, Charleston to West Point, Va.

Trans., p. 56, left col.

11. The Georgia Central Railroad, Montgomery to Savannah; Charleston & Savannah Railway, Savannah to Charleston; and the Atlantic Coast Line, Charleston to Norfolk.

Trans., p. 56, left col.

12. The Georgia Central Railroad, Montgomery to Atlanta; Seaboard Air Line, Atlanta to Norfolk.

Trans., p. 56, left col.

The competitive lines described above in this section are sufficiently illustrated in diagram No. 2:

XXXI.

COMPETITIVE LINES FROM THE PHOSPHATE BEDS IN SOUTH CAROLINA AND FLORIDA TO MONTGOMERY.

The Commission reports that shipments of phosphate rock are made via the following lines:

1. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Savannah; the Charleston & Savannah Railway, Savannah to Charleston.

Trans., p. 55, right col.

2. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Savannah; the Charleston & Savannah Railway, Savannah to Yemassee; the Port Royal & Augusta Railroad, Yemassee to Port Royal.

Trans., p. 55, right col.

3. The Alabama Midland Railway, Montgomery to Bainbridge; the Savannah, Florida & Western Railway, Bainbridge to Gainesville, Fla.

Trans., p. 55, right col.

4. The Georgia Central Railroad, Montgomery to Port Royal.

Trans., p. 55, right col.

5. The Georgia Central Railroad, Montgomery to Savannah; the Charleston & Savannah Railway, Savannah to Yemassee; the Port Royal & Augusta Railway, Yemassee to Port Royal.

Trans., p. 55, right col.

6. The Georgia Central Railroad, Montgomery to Savannah; the Charleston & Savannah Railway, Savannah to Charleston.

Trans., p. 55, right col.

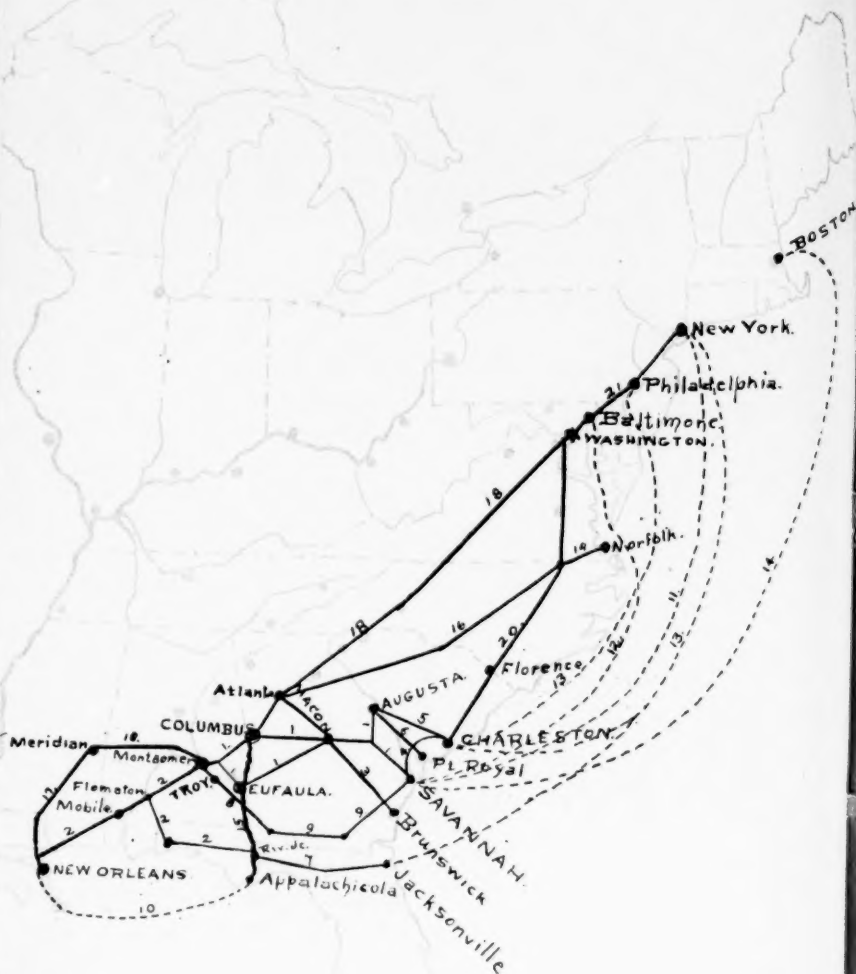
7. The Georgia Central Railroad, Montgomery to Macon; the Georgia Railroad, Macon to Augusta; the South Carolina Railroad, Augusta to Charleston.

Trans., p. 55, right col.; p. 56, left col.

The competitive lines described above in this section are sufficiently illustrated in said diagram No. 2.



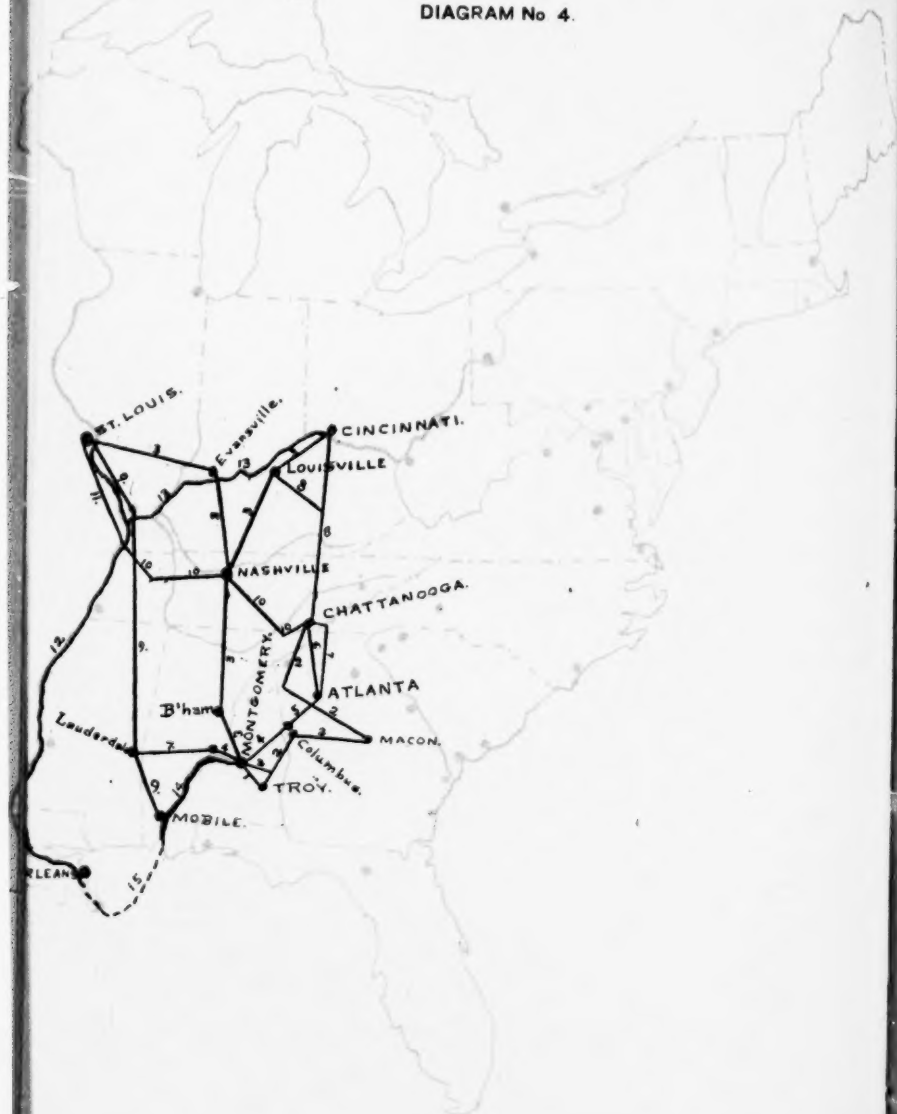
DIAGRAM No. 3.



INDEX TO DIAGRAM NO. 3.

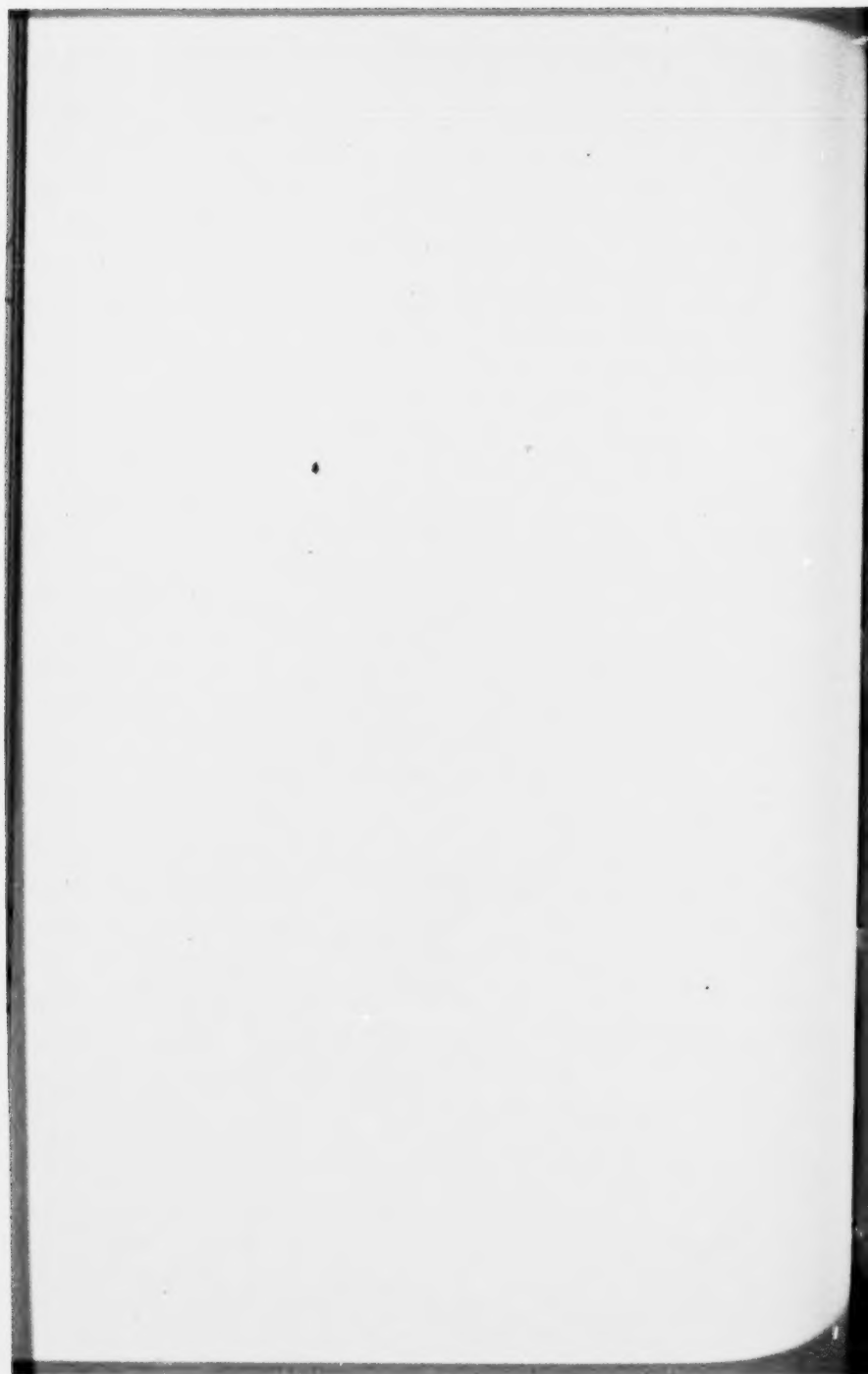
1. Central of Georgia Railway.
2. Louisville & Nashville Railroad.
3. East Tennessee, Virginia & Georgia Ry.
4. Charleston & Savannah Railway.
5. South Carolina Railroad.
6. Port Royal & Augusta Railroad.
7. Florida Central & Peninsula R. R.
8. Alabama Midland Railway.
9. Savannah, Florida & Western Railway.
10. Water Route, Appalachicola to New Orleans.
11. Ocean Steamship Route.
12. Merchants' & Miners' S. S. Route.
13. Clyde Steamship Route.
14. Ocean Steamship Route.
15. Chattahoochee River.
16. Seaboard Air Line.
17. Queen & Crescent Line.
18. Southern Railway.
19. Seaboard & Roanoke Railroad.
20. Atlantic Coast Line.
21. Pennsylvania Railroad.

DIAGRAM No 4.



INDEX TO DIAGRAM NO. 4.

1. Alabama Midland Railway.
2. Georgia Central Railroad.
3. Louisville & Nashville Railroad.
4. Western Railway of Alabama.
5. Atlanta & West Point Railway.
6. Western & Atlantic Railroad.
7. East Tennessee, Virginia & Georgia Ry.
8. Cincinnati, New Orleans & Tex. Pac. Ry.
9. Mobile & Ohio Railroad.
10. Nashville, Chattanooga & St. Louis Ry.
11. Missouri Pacific Railway.
12. Mississippi River.
13. Ohio River.
14. Alabama River.
15. Sail and Steamer Route.



XXXII.

COMPETITIVE LINES FROM LOUISVILLE, ST. LOUIS, AND CINCINNATI, TO MONTGOMERY.

The Commission reports that the most available routes or lines are the following:

1. The Louisville & Nashville Railroad, Montgomery to Louisville, Cincinnati, and St. Louis.

Trans., p. 56, right col.

2. Western Railway of Alabama, and Atlanta & West Point Railroad, Montgomery to Atlanta; the Western & Atlantic Railroad, or the East Tennessee, Virginia & Georgia Railway, Atlanta to Chattanooga; Cincinnati, New Orleans & Texas Pacific Railway, in connection with the Louisville Southern Railroad, Chattanooga to Cincinnati, and to Louisville.

Trans., p. 56, right col.

3. Western Railway of Alabama, Montgomery to Selma; East Tennessee, Virginia & Georgia Railway, Selma to Lauderdale; Mobile & Ohio Railroad, Lauderdale to St. Louis.

Trans., p. 56, right col.

4. The Georgia Central Railroad, Montgomery, via Columbus, to Chattanooga; Cincinnati, New Orleans & Texas Pacific Railway, in connection with the Louisville Southern Railroad, Chattanooga to Cincinnati, and to Louisville.

Trans., p. 56, right col.

5. The Georgia Central Railroad, Montgomery, via Columbus, to Chattanooga; Nashville, Chattanooga & St. Louis Railway, Chattanooga to Hickman; and the Missouri Pacific Railway, Hickman to St. Louis.

Trans., p. 56, right col.

The competitive lines, as described above in this section, are sufficiently illustrated in diagrams Nos. 3 and 4.

And in addition to the above is—

6. The Alabama River to Mobile; the Louisville & Nashville Railroad, or steamers, or sail vessels, Mobile to New Orleans; the Mississippi and Ohio Rivers from New Orleans to St. Louis, Louisville, and Cincinnati.

XXXIII.

COMPETITIVE LINES FROM MONTGOMERY TO NEW ORLEANS.

The following competitive lines run from Montgomery to New Orleans:

1. The Louisville & Nashville Railroad, Montgomery, via Mobile, to New Orleans.
2. The Alabama River, Montgomery to Mobile; Louisville & Nashville Railroad, Mobile to Montgomery.
3. Alabama River to Mobile; steamers and sail vessels, Mobile to New Orleans.
4. The Western Railway of Alabama, Montgomery to Selma; East Tennessee, Virginia & Georgia Railway, Selma to Lauderdale; Mobile & Ohio Railroad, Lauderdale to Mobile.
5. The Western Railway of Alabama, Montgomery to Selma; East Tennessee, Virginia & Georgia Railway, Selma to Meridian; Queen & Crescent Railroad, Meridian to New Orleans.
6. Western Railway of Alabama, Montgomery to Selma; Mobile & Birmingham Railroad, Selma to Mobile; Louisville & Nashville Railroad, or steamers, or sailing vessels, Mobile to New Orleans.
7. The Western Railway of Alabama, Montgomery to Selma; East Tennessee, Virginia & Georgia Railway, Selma to Meridian; Queen & Crescent Railroad, Meridian to Jackson; Illinois Central Railroad, Jackson to New Orleans.
8. Western Railway of Alabama, Montgomery to Selma; East Tennessee, Virginia & Georgia Railway, Selma to Meridian; Queen & Crescent Railroad, Meridian to Vicksburg.

The competitive lines described above in this section are sufficiently illustrated in diagram No. 3.

XXXIV.

ARGUMENT.

THE ORDER OF THE COMMISSION AS TO CLASS GOODS FROM NEW
YORK, BALTIMORE, OR OTHER NORTHEASTERN
POINTS, TO TROY, AND MONTGOMERY.

On shipments of class goods from New York, Baltimore, or other Northeastern points, carried *through* Troy, to Montgomery, the Commission enjoined the Appellees from charging more to Troy, the shorter distance point, than to Montgomery, the longer distance point.

The Commission did not find that the rates from New York, etc., to Troy are unjust or unreasonable in and of themselves; and, therefore, it did not find that said rates violate the first section of the Act to Regulate Commerce.

The Commission did not find that said rates constitute any unjust discrimination against Troy; and therefore it did not find that they violate the second section of the Act.

The Commission did not find that said rates subject Troy to any undue or unreasonable prejudice or disadvantage; and therefore it did not find that they violate the third section of the Act.

The Commission based said order exclusively upon the ground that said rates violate the "long and short haul" clause of the fourth section, which prohibits charging "any greater compensation in the aggregate for the transportation of passengers or of like kind of property, *under substantially similar circumstances and conditions*, for a shorter than for a longer distance over the same line, in the same direction."

The Commission held that the burden of proof was upon the appellee carriers to show a substantial dissimilarity of circumstances and conditions as between Troy and Montgomery; and that they had failed to do so.

Trans., pp. 57, 58.

The Appellees relied upon water competition at Montgomery via Alabama River and the ocean, and also upon competition

between the various water and rail lines, and the all-rail lines described above in Section XXIX., as constituting a substantial dissimilarity of circumstances and conditions; but the defense was overruled by the Commission.

So far as said order of the Commission is concerned, the only question of law for this Court to decide is, whether competition of any kind, and if so, of what kind, can be considered as one of the circumstances and conditions referred to in the fourth section of the Act?

I submit that this question was virtually settled by this Court in the "Import" case, and the "Social Circle" case; and the Circuit Court of Appeals, in this case, sustained my construction of the decisions of this Court in these cases.

Trans., p. 415.

XXXV.

THE "IMPORT" CASE, AND THE "SOCIAL CIRCLE" CASE.

In the case of the Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, known as the "Import" case, this Court held: "That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports, *as in the case of the traffic originating within the limits of the United States*, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freight which would otherwise go by other competitive routes are, or are not, undue or unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodity, are to be considered."

162 U. S., 233, 234, T. & P. Ry. vs. I. C. C.

XXXVI.

In the case of C., N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission, known as the "Social Circle" case, this Court said: "It was within the jurisdiction of the Commission to consider whether the said company, in charging a higher rate for a shorter than a longer distance, over the same line, in the same direction, the shorter being included within the longer dis-

tance, was or was not transporting property, in transit between States, *under substantially similar circumstances and conditions.*

“We do not say that, under no circumstances and conditions, would it be unlawful, when engaged in the transportation of foreign (interstate?) freight, for a carrier to charge more for a shorter than a longer distance on its own line; but it is for the tribunal appointed to enforce the provisions of the statute, whether the Commission or *the Court*, to consider whether the existing circumstances and conditions were or were not substantially similar.

“It has been forcibly argued that, in the present case, the Commission did not give due weight to the facts that tended to show that the circumstances and conditions were so dissimilar as to justify the rates charged. *But the question was one of fact, peculiarly within the province of the Commission, whose conclusions have been accepted and approved by the Circuit Court of Appeals, and we find nothing in the record to make it our duty to draw a different conclusion.*”

162 U. S., 193, 194, C., N. O. & T. P. Ry. vs. I. C. C.

XXXVII.

There is nothing in the decision in the “Social Circle” case which is at all inconsistent with the proposition announced in the “Import” case, that competition *which affects rates* is among the circumstances and conditions to be considered, as well “*in the case of traffic originating within the limits of the United States*” as in the case of traffic originating in foreign ports. In fact, this Court, in the “Social Circle” case, uses this language: “We do not say that under no circumstances and conditions would it be unlawful, when engaged in the transportation of foreign (interstate?) freight, for a carrier to charge more for a shorter than a longer distance on its own line, *but it is for the tribunal appointed to enforce the provisions of the statute, whether the Commission or the Court, to consider whether the existing circumstances and conditions were or were not substantially similar.*”

162 U. S., 193, 194, C., N. O. & T. P. Ry. vs. I. C. C.

In other words, I understand the conjoint effect of the two decisions to be this, viz.: Under the “Social Circle” decision, it is for the Commission, *or the Court*, to consider whether the exist-

ing circumstances and conditions are, or are not substantially similar; and under the "Import" decision, competition that *affects rates* should be considered as one of the existing circumstances and conditions.

XXXVIII.

In the "Social Circle" decision, this Court holds that the question whether such competition exists in the particular case as "*affects rates*," and therefore whether the competition relied on in the particular case should be considered, is a *question of fact*; and where the United States Circuit Court of Appeals accepts and approves the finding of the Commission upon that question of fact, this Court will not, ordinarily, reverse.

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

XXXIX.

In the "Import" case, the Circuit Court conceded that the rates for the transportation of traffic from Liverpool and London to San Francisco were, in effect, fixed and controlled by competition; and the Court of Appeals in that case practically conceded the same thing.

162 U. S., 236, 237, T. & P. Ry. vs. I. C. C.

That case, therefore, presented the facts to this Court in such a way as to enable this Court to decide the main question of law, viz.: Whether competition which *affects rates* can be considered as among the circumstances and conditions; and this Court held that it can.

In the case at bar, the Commission decided the question of fact against the Appellees. But a large amount of additional testimony was taken by both parties in the Circuit Court.

The Circuit Court, and the Circuit Court of Appeals, with *all* the testimony before them found, as a fact, that the competition upon which the Appellees rely does exist, that it *affects rates*. I submit that the finding of fact by those Courts is justly entitled to more weight in this Court than the finding of the Commission; especially as the Commission had before it *only a part of the facts* now in the record.

This case is presented to this Court, just as the "Import" case was presented, *& c.*, with the Circuit Court, and the Circuit Court of Appeals both finding that the competition claimed by the Appellees in fact exists, and is such as to *affect rates*. And if this Court adheres to its decision in the "Social Circle" case, viz.: That the question is "one of fact," it will affirm the decree of the Circuit Court of Appeals if it finds "nothing in the record to make it our duty to draw a different conclusion."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

XL.

This Court said in the "Social Circle" case, that it is "for the tribunal appointed to enforce the provisions of the statute, whether the Commission or the Court, to consider whether the *existing circumstances or conditions*, were or were not substantially similar."

162 U. S., 193, 194, C., N. O. & T. P. Ry. vs. I. C. C.

The Court also said that the question whether "*the circumstances and conditions* were so dissimilar as to justify the rates charged." is a question "*of fact*."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

If the "Social Circle" case had stood alone, it would still have been a mooted question as to whether *competition* is one of the "existing circumstances and conditions" which may legally be considered in determining whether the dissimilarity is such "as to justify the rates charged?" But that question *of law*, which was left undecided in the "Social Circle" case, was expressly decided in the "Import" case, where the Court said "*that among the circumstances and conditions to be considered*, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that *affects rates* should be considered, and in deciding whether rates and charges, made at a low rate to secure foreign freight, which would otherwise go by other competitive routes, are or are not undue or unjust, the fair interests of carrier companies and the welfare of the community, which is to receive and consume the commodities, are to be considered."

162 U. S., 233, 234, T. & P. Ry. vs. I. C. C.

In the "Import" case, this Court not only decided, as a ques-

tion of law, that competition is one of the circumstances and conditions to be considered, but it also decided that the question *of fact* to be determined by the "Commission or the Court," is whether the competition is such that it "*affects rates*," *i. e.*, whether the low rate charged at the competitive point is necessary to secure freight "*which would otherwise go by other competitive routes*."

162 U. S., 233, 234, T. & P. Ry. vs. I. C. C.

XLI.

While I submit with great confidence that the question has been decided by this Court in the "Import" case, and the "Social Circle" case, yet as opposing counsel contend otherwise, there is nothing left for me to do but to present again the arguments that were made in those cases.

As the phrase "under substantially similar circumstances and conditions" was imported into the fourth section from the second section, and as the third section is closely allied to the second and fourth, I will consider those three sections in their order.

XLII.

THE SECOND SECTION OF THE ACT TO REGULATE COMMERCE, AND THE ENGLISH "EQUALITY CLAUSE."

Section 90 of the English "Railway Clauses Consolidation Act (1845)," known as the "Equality Clause," is the model from which the second section of the Act to Regulate Commerce was adapted.

For the convenience of the Court the English "Equality

Clause," and the second section of the Act to Regulate Commerce are here published in parallel columns:

EQUALITY CLAUSE.

English Act.

SEC. 90. Railway Clauses Act 1845.

"And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties: it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special Act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; *provided*, that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods and carriages of the same description, and conveyed or propelled by a like carriage or engine, *passing only over the same portion of the line of railway under the same circumstances*; and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person traveling upon or using the railway."—*Second Annual Rep. I. C. C. (1888), page 89.*

UNJUST DISCRIMINATION CLAUSE.

American Act.

SEC. 2. Act to Regulate Commerce, 1887.

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."—24 U. S. Stat. at Large, pages 379 and 380.

It will be noticed that Section 90 of the English Act recognizes the right of the company to vary the tolls "so as to accommodate them to circumstances;" that it expressly authorizes the company to vary the tolls "upon the whole or any particular portion of the railway;" and that the "Equality Clause," which is a

mere *proviso* to that section, is, by its terms, confined to the single case where the goods pass "*only over the same portion of the line of railway, under the same circumstances.*"

The English Court of Appeals, in 1884, per Lindley, L. J., said: "The expression, 'passing *only over the same portion of the line*' appears to us to mean *passing between the same points of departure and arrival, and passing over no other part of the line.*"

4 Railway & Canal Traffic Cases, p. 452, M. S. & L. Ry. Co. vs. The Denaby Main Colliery Co.

4 Railway & Canal Traffic Cases, p. 460, Murray vs. G. & S. W. Ry. Co.

6 Railway & Canal Traffic Cases, p. 141, The Denaby Main Colliery Co. vs. The M. S. L. Ry. Co.

Law Rep. 21, Q. B. (1888), pp. 217, 218, L. & Y. Ry. Co. vs. Greenwood.

Counsel for the Appellant may rely upon the English Cases of the Railway Company vs. Sutton; Evershed's Case; and the Denaby Main Colliery Co. Case; as holding that the words, "under the same circumstances," used in the English "Equality Clause," apply *alone* to the "circumstances of the carriage;" that goods are carried under "like circumstances" where *rate of speed, risk and expense of carriage are the same*; and that competition cannot be regarded as a "circumstance" within the meaning of the English "Equality Clause."

The English "Equality Clause" had no application where the freight of one shipper, though carried over the same line, *was carried a greater distance from a common point of departure than the freight of another shipper*. In such a case, the freight carried the greater distance would pass "over the same portion of the line" as the freight carried the lesser distance; but the freight carried the greater distance would also pass over an *additional* portion of the line; and, therefore, the two shipments would not pass "*only over the same portion of the line.*"

Law Rep. 21, Q. B. (1888), pp. 217, 218.

As the English "Equality Clause" only applied to traffic "passing between the *same points of departure and arrival*," it is manifest that the question as to the effect of a substantial dissimilarity in the *competitive conditions* which might prevail at *different points of departure*, or at *different points of arrival*, could not possibly arise under that clause.

Suppose the line A B to represent a railroad.

A ————— B

Suppose two or more shipments of freight, of the same class or description, to be made from A to B; the English "Equality Clause" would apply; because the shipments would pass only over the same portion of the line, from the same point of departure, to the same point of arrival.

If the railroad A B has no competition, there will be no limit to the rates which it can charge, except that they be reasonable, in and of themselves, and not higher than the traffic can afford to pay. Such non-competitive rates must, however, be charged equally to all persons, on all goods of the same description, passing from A to B, "under the same circumstances."

If, however, there be other lines which compete with the railroad A B, and, in consequence thereof, it be forced to accept competitive rates, which are lower than it might otherwise reasonably charge; still, if it accept such competitive rates from one person shipping from A to B, it must accept from all other persons shipping from A to B the same competitive rates, equally, in respect of all goods of the same description, passing from A to B, under the same circumstances.

It was, therefore, said in some of the English cases, that the word "circumstance," as used in the English "*Equality Clause*," did not refer to *competitive* conditions. The reason was, that whatever competition might exist, it necessarily affected all shippers, equally; because the "*Equality Clause*" did not apply in any case unless the same class of goods were shipped *between the same points of departure and arrival*.

It was also said, in the same English cases, and for the same reason, that the words "under the same circumstances," as used in the English "*Equality Clause*," apply alone to the circumstances of "the carriage;" and that goods are carried under "like circumstances," whenever the rate of speed, risk, and expense of carriage are the same.

One of the errors of the Commission in this case resulted from the fact that it applied to the second, third, and fourth sections of the Act to Regulate Commerce, a construction which some of the English courts had applied to their "*Equality Clause*;"

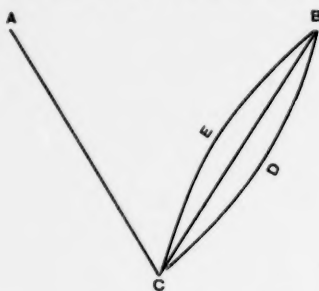
the Commission overlooking the fact that the "*Equality Clause*" did not affect any shipments, except such as passed *only over the same portion of the line, between the same points of departure and arrival.*

Suppose the line A C and the line B C to represent two lines of railroad, belonging to the same company :



Suppose said lines to be of equal length. Suppose a shipment of a certain class of freight to be made from A to C; and, at the same time, a shipment of the same class of freight to be made over the equal distance, from B to C; the English "*Equality Clause*" would *not* apply. The point of arrival would be the same; but the points of departure would be different, and the shipments would pass over different portions of the line. So, if a shipment of a certain class of freight be made from C to A, and, at the same time, a shipment of the same class of freight be made over the equal distance, from C to B, the English "*Equality Clause*" would *not* apply. The point of departure would be the same; but the points of arrival would be different, and the shipments would pass over different portions of the line. Certain competitive conditions might govern traffic passing between B and C, which would be substantially dissimilar from those governing traffic passing between A and C; as will be illustrated in the next diagram.

Suppose the line A C, and the line B C, to represent the same two lines of railroad as were shown in the last diagram.



Suppose the curved lines C D B and C E B to represent railroads, or navigable rivers, which are in competition with the line B C. The rates offered by those competing lines must be met by the line B C, or it must abandon the business; and yet, if it meets the competitive rates, it must accept lower rates from B to C, than it accepts for the equal distance, from A to C; notwithstanding the rates from A to C may be reasonably low, in and of themselves. If the company were compelled to retire from competition on the line B C, and abandon that traffic to the rival lines, the company would have no source of freight revenue, except the freight passing between A and C; and, assuming the volume of such freight to be equal to the volume of freight passing between B and C, the company would be compelled to charge higher rates between A and C, than it could have afforded to accept, if it had been allowed to compete for freight between B and C.

If the English "*Equality Clause*" had been applied to shipments from different points of departure, or to different points of arrival, persons shipping between B and C, would have been deprived of their natural advantage, consisting of the fact that they had two or more competing lines upon which to rely for the transportation of their traffic; and persons shipping between A and C, would have been deprived of their natural advantage, consisting of the fact that they could have obtained very much lower railroad rates, if the line B C had been allowed to compete with its rivals, and the company had not been forced to rely for its support, exclusively upon freight passing between A and C.

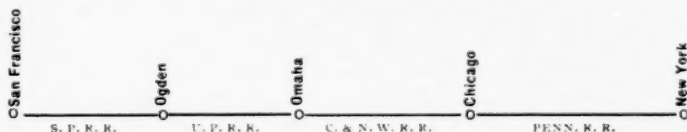
XLIII.

THE ENGLISH "EQUALITY CLAUSE" NOT SUITED TO THIS COUNTRY.

It appears from a statement made by Senator Sherman on the 14th of January, 1887, in the debate on the Act to Regulate Commerce, that the words, "and from the same original points of departure, or from the same points of arrival," were at one time contained in the bill then under discussion; and that those words were stricken out by the Conference Report.

While the English "*Equality Clause*" may be suited to the commerce of a small country like England, where the lines of railway are comparatively short, such a clause would be highly detrimental in this country, where several lines of railroad engage in the transportation of traffic for very great distances, and frequently carry traffic entirely across the continent. Congress, therefore, acted wisely, in striking out the words referred to by Senator Sherman; and in adopting the words, "under substantially similar circumstances and conditions," which import a very different meaning from the words, "under the same circumstances," as found in the English "*Equality Clause*," which was confined in its operations to shipments passing only over the same portion of the line, between the same points of departure and arrival.

Suppose the following diagram to represent a joint through line from San Francisco to New York, composed of the separate lines of five different railroad companies:



Suppose two car loads of wheat to be shipped from San Francisco, on the same day, and in the same train; that one of said cars be destined to Ogden, where the wheat contained in it is to be ground into flour, and consumed. Suppose the other car load

of wheat be destined to New York, whence it is to be exported to Liverpool, to be sold in competition with wheat grown in Russia, India, or Argentine. Now, if the English "*Equality Clause*" had been adopted by Congress, and with the construction which some of the English courts placed upon the words "under the same circumstances, *as used in that clause*, the Southern Pacific Railroad Company would have been compelled to charge precisely the same rate, per ton, per mile, upon the car load of wheat destined to New York, as it charged upon the car load destined to Ogden. The two shipments would have consisted of "goods of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the railway, under the same circumstances." All the "*circumstances of the carriage*," by the *Southern Pacific Railroad Company*, would have been exactly the same. "*The rate of speed, risk and expense of carriage*," by that railroad, would have been exactly the same. Every circumstance and condition which could have had the slightest relation, "*to the nature and character of the service rendered by the carrier*," or which could possibly have affected the "*cost of transportation*," was, *so far as the Southern Pacific Railroad was concerned*, exactly the same in the case of the car destined to New York, as in the case of the car destined to Ogden. The points of arrival and departure, *so far as the Southern Pacific Railroad was concerned*, would have been exactly the same; and yet no one will pretend that the Southern Pacific Railroad Company would have been obliged to charge as much per ton, per mile, on the car destined to New York, as it charged upon the car destined to Ogden.

If the joint through rates, charged by a long through line of American railroads, were required to be equal to the sum of the separate through rates of the different railroads forming the through line, it would be impossible to move a very large per cent. of the traffic of this country.

2 I. C. C. Rep., 584, Lippman vs. I. C. R. R.

XLIV.

ENGLISH CASES UPON THE EQUALITY CLAUSE WHICH MAY BE RELIED UPON BY COUNSEL FOR THE APPELLANT.

Cases which may be relied upon are : The Great Western Ry. Co. vs. Sutton, Law. Rep 4, H. L., p. 226 ; L. & N. W. Ry. Co. vs. Evershed, Law Rep., 3 App. Cas., p. 1029 ; M. S. & L. Ry. Co. vs. Denaby Main Colliery Co., Law Rep., 11 App. Cas., p. 97, reported also in 6 Railway & Canal Traffic Cases, p. 133.

The Sutton case was this: Sutton was what is known in this country, as an express carrier, and was engaged in doing an express business over the line of the Railway Company. The Railway Company was also engaged in doing an express business, on its own account, over its own line; and the express goods carried by the Railway Company were of the same description, and were carried *only over the same portion of the line*, and under the same circumstances, as were the express goods which were carried for Sutton. *As the points of departure and arrival were the same*, with reference to Sutton's goods, as they were with reference to the express goods carried by the Railway Company on its own account, the discrimination was held to be a violation of the "*Equality Clause*."

Suppose the Adams Express Company were conducting an express business over the line of the Appellees, between New York and Montgomery, and that the Appellees were also engaged in conducting an express business on their own account, over their own line, between the same points. The Sutton case decides that the Appellees could not charge the Adams Express Company higher rates than they charge for express matter carried upon their own account, between the same points; but it does not decide that the Appellees could be compelled to accept from the Adams Express Company the same rate for transportation between New York and Troy, as they may be accepting for similar traffic shipped between New York and Montgomery.

The Evershed case was this: The Midland Railway Company, and the London & Northwestern Railway Company were in active competition at Burton-upon-Trent.

Certain persons owned breweries at Burton-upon-Trent, adjacent to the main line of the Midland Railway, and had side tracks running from said main line into their breweries; so that their freights could be loaded and unloaded by their own servants, directly upon the cars of the Midland Railway, without any expense for cartage, or other terminal charges. The plaintiffs also owned breweries at Burton-upon-Trent; but their breweries were not connected with the Midland Railway, by side track, or otherwise. The London & Northwestern Railway charged the plaintiffs, whose breweries were not connected with the Midland Railway, cartage for hauling the plaintiffs' goods from their breweries to the depot of the L. & N. W. Ry.; but, as to those persons whose breweries were connected with the Midland Railway by side tracks, the L. & N. W. Ry. Co. hauled their goods to and from its depot, free of charge. It resulted that two persons might ship by the L. & N. W. Ry. Co. goods of the same description, from the same point of departure (*i. e.*, Burton-upon-Trent), and to the same point of arrival, the goods passing only over the same portion of the line, and yet the rate charged by the L. & N. W. Ry. Co. against one of them, would be greater (to the extent of the cartage charge), than the rate charged against the other.

If the Appellees in this case were to charge more to one shipper than another, where both shippers were sending the same description of goods from New York to Troy, the Evershed case would be an authority against the Appellees; but there is nothing in the Evershed case, which intimates that upon a shipment from New York to Troy, the Appellees are bound to accept the same rate as from New York to Montgomery.

The Evershed case was recently cited by the Sixth Circuit Court of Appeals, in the case of *D. G. H. & M. Ry. vs. I. C. C.*, and it was said by the Court that the Evershed case has been "very much restricted," if not "overruled," by the subsequent cases.

74 Fed. Rep., p. 835; *D. G. H. & M. Ry. vs. I. C. C.*

This Court, in the "Import case," said that the Evershed case has been "much modified, if not fully overruled by the later cases."

T. & P. Ry. vs. I. C. C., 162 U. S., 224.

The Denaby Main Colliery Co. case was this: A railway company carried coal for different customers "only over the same portion" of its line of railway; and it was held, that the fact that the coal carried for one customer was to be shipped to certain ports, in order to develop a new trade, or to open up new markets, and so to increase the tonnage carried, did not constitute such a difference in the "circumstances," as to justify an inequality of rates.

The House of Lords, in the Denaby Main Colliery Co. case, referring to Sutton's case, and Evershed's case, states, that the goods in those cases were carried *only "over the same portion of line."*

See the Report of the Denaby Main Colliery Co. case, in 6 Railway and Canal Traffic Cases, pp. 133, 141.

If two persons were to ship the same description of goods, by the line of the Appellees, from New York to Troy, and the Appellees should charge one of them a less rate than the other, merely because the goods of the former were intended for some specific purpose, the Denaby Main Colliery Co. case would be an authority against the Appellees; but there is nothing in that case to intimate that the Appellees are bound to accept a rate from New York to Troy not higher than their rate from New York to Montgomery.

XLV.

OTHER ENGLISH CASES UPON THE "EQUALITY CLAUSE."

In the case of the Attorney-General vs. B. & D. J. Ry. Co., 2 Eng. Ry. and Canal Cases, p. 124, it appeared that the Birmingham & Derby Junction Railway Act empowered that company to receive from passengers conveyed by the company's carriages, tolls, not exceeding a specified amount. By the sixty-third section of a subsequent Act, it was provided that the charges by the first Act, authorized to be made for the carriage of passengers, goods, etc., "shall be at all times charged equally, and after the same rate per ton, per mile, in respect of all passengers and goods of a like description, and conveyed or propelled by a like car-

riage or engine passing *on the same portion of the line only, and under the same circumstances,*" etc. p. 127.

The B. & D. J. Ry., commencing at Derby, intersected the L. & B. Ry. at Hampton-in-Arden. Afterward the Midland Counties Ry. was built from Derby to an intersection with the L. & B. Ry. at Rugby. There were then two competing routes from Derby to London; and the new route opened by the M. C. Ry. was the shortest. In order to meet that competition, the B. & D. J. Ry. Co. charged through passengers who were traveling between the competitive points, Derby and London, at the rate of two shillings between Derby and Hampton-in-Arden, while they charged local passengers who were only traveling between the non-competitive points, Derby and Hampton-in-Arden, or points on the L. & B. Ry., short of London, at the rate of eight shillings between those points.

The Attorney-General filed a bill against the B. & D. J. Ry. Co., charging that said company had fixed the aforesaid unequal charges, since the opening of the M. C. Ry., "in order to induce passengers, goods, and merchandise to be conveyed to Derby by way of their railway; and for that purpose have made a reduction in the charge for conveyance by them, in favor of persons traveling upon the railway between Hampton-in-Arden and Derby, who are proceeding from or to London along the L. & B. Ry., and who would otherwise travel by the M. C. Ry., although such persons traveled upon and used the railway between Hampton-in-Arden and Derby *under the same circumstances* with persons in favor of whom no such deduction is made." p. 129.

The bill prayed (p. 130) "that it may be declared that the charges made by the B. & D. J. Ry. Co. for the carriage of passengers, goods, wares, and merchandise conveyed by the company, and *passing on the line of the railway for the whole distance between Hampton-in-Arden and Derby by the same or like trains, propelled by the same or like carriages*, ought to be charge l equally and after the same rate, whether such passengers, goods, merchandise, etc., proceed on, or are conveyed along the L. & B. Ry. for the whole distance from or to London or not, . . . and that the company be restricted from charging lower rates in respect of such passengers, goods, and merchandise as pass along

the L. & B. Ry. for the whole distance between London and Hampton-in-Arden, than the rate charged by said company in respect of such passengers, goods, and merchandise as do not pass along the L. & B. Ry. at all, or so pass for a distance short of the whole distance between London and Hampton-in-Arden."

The Lord Chancellor dismissed the motion with costs, saying: "It is not denied that they (the company) carry those who are going (from Derby to Hampton-in-Arden) at the charge which they are authorized to make, but persons traveling *under other circumstances*, not intending to stop there, but going on to London, are, according to the Attorney-General's complaint, charged two shillings instead of eight shillings. Now, I do not know who will suffer by that arrangement, whatever may be the cause of it. . . . The Attorney-General now asks me to interfere to prevent the company carrying passengers (between competitive points) at too low a rate. . . . It is not necessary to say anything about the jurisdiction of the Court, or how far I should interfere if I had the power, because I am quite clear that the sixty-third section has not the slightest reference to this case." p. 132.

The sixty-third section of the B. & D. J. Ry. Act was almost identical with the English "Equality Clause." All passengers who were carried by the B. & D. J. Ry. from Derby to Hampton-in-Arden were, so far as that railway was concerned, carried *from the same point of departure to the same point of arrival*; and therefore they were carried over "*the same portion of the line only*." They were conveyed in the same cars, propelled by the same engines, and under the same circumstances, so far as "*the rate of speed, risk, and expense of carriage*" by that railway were concerned. Every circumstance and condition which could have had the slightest relation "*to the nature and character of the service rendered by the carrier*," or which could possibly have affected the "*cost of transportation*," was, so far as that railway was concerned, exactly the same, in the case of one of those passengers, as it was in the case of the other. It follows, therefore, that the Chancellor, in holding that the "Equality Clause" did not apply, must have been of opinion that passengers carried between competitive points (*i. e.*, between Derby and London) are not carried

under the same circumstances as local passengers carried between non-competitive points (*i. e.*, between Derby and Hampton-in-Arden); notwithstanding both classes of passengers may have traveled over the same portion of the *B. & D. J. Ry.*, in the same cars, propelled by the same engines.

The following diagram sufficiently illustrates the competitive situation which existed between the Birmingham & Derby Junction Railway and the Midland Counties Railway, referred to in the case last cited :



XLVI.

LEGISLATIVE HISTORY OF THE SECOND SECTION OF THE ACT TO REGULATE COMMERCE.

On January 6, 1886, Hon. John H. Reagan introduced in the House of Representatives, H. R. 2412, known as the "Reagan Bill."

The first section declared it to be unlawful, "directly or indirectly to charge to, or receive from, any person, any greater or less rate or amount of freight, compensation, or reward than is charged to, or received from, any person, or persons, for *like and contemporaneous service* in the carrying, receiving, delivering, storing, or handling of the same," etc.

On January 18, 1886, Senator Cullom introduced in the Senate, S. 1093, known as the "Cullom Bill."

The second section declared it to be unlawful, directly or indirectly, to charge or receive from any person or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, than it charges, demands, collects or receives from any other person or persons for doing for him or them "*a like and contemporaneous service, in*

the transportation of a like kind of traffic, under substantially similar circumstances and conditions."

It will be noticed that the second section of the Cullom Bill adopts from the first section of the Reagan Bill, the phrase, "like and contemporaneous service;" but adds two very important qualifications to that phrase, viz., that the traffic shall be of like kind, and that the circumstances and conditions shall be substantially similar.

The prohibition against unequal charges in cases of "*a like and contemporaneous service*," contained in the Reagan Bill, was sufficient to cover every circumstance and condition that could possibly affect the *cost to the carrier*; and if it had been intended that the *cost to the carrier* should be the sole, or controlling factor in fixing rates of transportation, the Reagan Bill needed no amendment, whatever, on that point. For, if the *service* is "*like and contemporaneous*" in two cases, the *cost to the carrier* of performing the mere transportation service would be, practically, the same in each case. A car loaded with coal, and a car loaded with dry goods, if carried the same day, in the same train, propelled by the same engine, over the same portion of the road, would present a case of "*like and contemporaneous service*," under the Reagan Bill; and assuming the weights of the two car loads to be the same, the *cost to the carrier* of the mere transportation service, would be, practically, no more in the case of the car load of dry goods, than it would be in the case of the car load of coal.

Grave fears were expressed that the Reagan Bill, if passed, would compel a railroad, in the case last supposed, to charge as much for the car load of coal, as for the car load of dry goods; and, consequently, that the Reagan Bill would destroy the entire system of railroad freight classification. In order to remove all doubt upon that point, the Cullom Bill provided that before equality of charge can be demanded, it must be shown not only that the *service* was "*like and contemporaneous*," but also that the service was rendered "*in the transportation of a like kind of traffic*." None of the low class freight could be moved at all, if forced to pay first-class rates, or even the average of all the rates, charged by railroads for transportation. (Wholesale Prices, Wages and Transportation, Senate Report, 1394, 2d Sess., 52d Cong., Part I, p. 403.) The Cullom Bill, therefore, authorized the railroads, even where the *cost to the carrier* was, practically, the same, to so graduate their rates upon each "*kind of traffic*," as to enable all

kinds to be moved, without injustice to any; thus recognizing as sound the much-abused and misunderstood principle of charging no more than the particular "traffic can bear."

But the Cullom Bill went still further. It recognized the fact that there might be "a like and contemporaneous service;" and that such service might be rendered "in the transportation of a like kind of traffic;" and yet, that it might be ruinous to the best interest of the country, to force an absolute, unconditional equality of charge in every case. It was known that the products of the West, and Northwest, could never reach the seacoast, if the joint through rates, charged by a long through line of railroads, were required to be equal to the sum of the separate through rates of the different railroads forming the through line.

2 I. C. C. Rep., 584, Leppman vs I. C. R. R.

It was known that the destruction of that traffic would destroy the competition which has existed between the various cities of the Northwest, for the control of that traffic; and that it would also destroy the competition which has existed between the different railroads of that section, for the carriage of that traffic. In order to protect those vast interests, the Cullom Bill provided, that before equality of charge can be demanded, three important facts must be shown:

First: That the *service* "is like and contemporaneous." This covers every element that can enter into the *cost to the carrier* of rendering the service.

Second: That the service shall be rendered in the transportation of "*a like kind of traffic*." This preserves the system of railroad freight classification.

Third: That the transportation service shall be rendered under "substantially similar circumstances and conditions." This general clause was intended to cover all such other circumstances and conditions as should properly influence the making of railroad rates; and, among others, the important conditions arising out of the competition of carrier with carrier, market with market, and product with product.

I submit with great confidence that the principal object of using the phrase, "under substantially similar circumstances and conditions," in the second section of the Cullom Bill, was to cover those circumstances and conditions which arise out of one, or the other, of the three kinds of competition just mentioned.

XLVII.

THE CONSTRUCTION OF THE SECOND SECTION BY THIS COURT.

In the case of the I. C. C. vs. B. & O. R. R., 145 U. S., 281, known as the "party rate" case, Mr. Justice Brown said:

"In order to constitute an unjust discrimination under section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a 'like and contemporaneous service in the transportation of a like kind of traffic, *under substantially similar circumstances and conditions.*' To bring the present case within the words of this section, we must assume that the transportation of ten persons on a single ticket is substantially identical with the transportation of one, and, in view of the universally accepted fact that a man may buy, contract, or manufacture on a large scale cheaper proportionately than upon a small scale, this is impossible.

"In this connection we quote with approval, from the opinion of Judge Jackson in the Court below: 'To come within the inhibition of said section, the differences must be made under like *conditions*; that is, there must be contemporaneous service in the transportation of like kinds of traffic under substantially the same circumstances and conditions. In respect to passenger traffic, *the positions of the respective persons, or classes, between whom differences in charges are made, must be compared with each other, and there must be found to exist substantial identity of situation AND of service, accompanied by irregularity and partiality, resulting in undue advantage to one, or undue disadvantage to the other, in order to constitute unjust discrimination.*' p. 282.

The Commission insists upon applying to the second section of our Act, certain language to be found in certain English cases, decided upon the English "Equality Clause," which was confined to shipments moved between the same points of departure and arrival, and which passed only over the same portion of the line. The Commission insists upon its rule of construction, notwithstanding Congress purposely omitted all reference to the English requirement in regard to the goods passing "only over the same portion of the line;" and deliberately

struck out of the Act all reference to points of departure and arrival.

The Supreme Court said that the Act was not intended "to prevent competition between different roads;" and, if that be so, the dissimilarity in the *competitive* "CONDITIONS," or in the *competitive* "SITUATION," may be legitimately considered, as well as the "service" rendered by the carrier.

The only object which the B. & O. R. R. had in selling "party rate" tickets, was to enable it to compete successfully with its rivals who had not seen proper to issue that kind of tickets.

The Commission not only restricts the comparison to the "service" performed by the carrier, but it insists that, in comparing the "service," only those elements shall be considered which have relation "to the cost" to the carrier, of rendering the service. This is the more remarkable, because the Commission admits the well-known fact that it is "impossible to apportion, with accuracy, the cost of service among the items of traffic;" and, in consequence thereof, that "the propositions which, from time to time, have been made in other countries to measure the charges of the carrier by the cost of the carriage, solely, have always been abandoned after investigation."

1 I. C. C. Rep., 63, 64, in re L. & N. R. R. Co.

By restricting the comparison to those elements only which have relation "*to the cost*" to the carrier of rendering the service, the Commission "ignores the element of *the value of the service (to the shipper)* in fixing the reasonable compensation, and denies the shipper any remuneration for additional *risk*."

It was because the Commission had disregarded the element of *the value of the service*, and had denied the carrier any remuneration for additional *risk*, that Judge Wallace refused to enforce the order of the Commission in the case of I. C. C. vs. D. L. & W. R. R. Co., 64 Fed. Rep., 724.

The "*value of the service*" rendered by one carrier, cannot exceed the rate for which a competing carrier may offer to perform the same service.

And, therefore, the consideration of "*the value of service necessarily involves the competition which limits that value.*"

XLVIII.

THE THIRD SECTION OF THE ACT TO REGULATE COMMERCE, AND
THE SECOND SECTION OF THE ENGLISH ACT OF 1854.

Section 2 of the English "Act for the better regulation of the traffic on Railways and Canals" (10th July, 1854); and the 11th section of the English "Act to make better provisions for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith" (21st July, 1873); contain certain provisions from which the third section of the Act to Regulate Commerce was modeled.

For the convenience of the Court, I print in parallel columns, so much of said section as are material for the present purpose:

UNDUE PREFERENCE CLAUSE.

English Act.

SEC. 2. Railway and Canal Traffic Act, 1854.—1 *Nev. & Mac.*, p. 2.

SEC. 11. Railway and Canal Traffic Act, 1873.—1 *Nev. & Mac.*, p. 11.

. And no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.—1 *Nev. & Mac.*, pp. 2-11.

UNDUE PREFERENCE CLAUSE.

American Act.

SEC. 3. Act to Regulate Commerce.

That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.—24 *U. S. Stat. at Large*, p. 380.

XLIX.

THE HISTORY OF THE SECOND SECTION OF THE ENGLISH
ACT OF 1854.

The following history of the second section of the English Act of 1854 is taken from the opinion of the Court in the case of Lancashire & Yorkshire Railway Co. vs. Greenwood, Law Rep. 21, Q. B. (1888), pp. 217, 218, decided April 25, 1888; cited by the Sixth Circuit Court of Appeals in D. G. H. & M. Ry. Co. vs. I. C. C., decided April 14, 1896. 74 Fed. Rep., p. 835.

"In the Railways Clauses Consolidation Act, 1845, (8 & 9 Vict. C. 20), Section 90, there was a provision requiring that the company should charge equal rates; but that had been construed by the courts to mean equal rates for the carriage of goods *over the same portions of the line*, so that, if there was a charge from A to B, which was equal to all persons sending goods from A to B, no objection could be raised to that under section 90 of the Railways Clauses Consolidation Act; but if a particular person X was charged so much for the carriage of his goods from A to B, and another person Y was charged less, then there was inequality within the meaning of section 90 of the Railways Clauses Consolidation Act, which entitled the person aggrieved to maintain an action for the amount which had been overcharged to him."

"Where, however, the places over which the goods were carried were not the same, as for instance where there was a charge of so much from A to B, and of so much from B to C, then although the charges might be the same, while the distances were only half in the one case what they were in the other, yet that was not an inequality within section 90 of the Railways Clauses Consolidation Act."

"In order to meet this grievance the Railway and Canal Traffic Act, 1854, was passed, and by section 2 of that Act it is open to any person to complain that he is subjected to undue or unreasonable prejudice or disadvantage by reason of the charge for carriage from A to B being excessive as compared with what is charged for carriage from B to C. That complaint was one which before then he could not have made; but under the Rail-

way and Canal Traffic Act, 1854, he is enabled to go before the Court to make that complaint."

"Obviously the considerations would be of a somewhat intricate nature. It would be necessary to inquire what were the reasons why more was charged for one distance than was charged for another distance, or why proportionately more was charged for one distance than was charged for another, and that would depend upon a great many considerations arising out of *the nature of the traffic*, the peculiar facilities, THE COMPETITION WHICH MIGHT BE DEVELOPED and a great many other matters which quite obviously were unfit to be tried by a jury, and therefore the Legislature thought fit when passing the Railway and Canal Traffic Act of 1854 to add section 6 which is in these terms: No proceeding shall be taken for any violation or contravention of the above enactment except in the manner herein provided," etc. . . .

"The manner provided in the Railway and Canal Traffic Act was by application to the Court of Common Pleas by motion or summons and peculiar powers were given to the Court to enable them to deal with the complaint when it arose, and to arrive at a just estimate as to whether there was or was not any grievance to which the complainant had been subjected. As I have said it was a matter which was necessarily complicated; and very unfit indeed to be tried by a common jury to whom the consideration that the charge from A to B was larger in proportion to the mileage than the charge from B to C *presented almost irresistible attractions.*"

The jurisdiction was afterward transferred from the Court of Common Pleas to the Railway Commissioners by the Regulation of Railways Act, 1873 (36 and 37 Vict. C., 48), Section 6.

Law Rep. 21 Q. B. (1888), pp. 217, 218, and note on p. 218, L. & Y. Ry. Co. vs. Greenwood.

The Italics in the above quotation are mine.

L.

ENGLISH CASES UNDER THE RAILWAY AND CANAL TRAFFIC ACT,
1854.

The case of *Hozier vs. The Caledonian Ry. Co.*, 1 Nev. & Mac., pp. 27-32, was decided in 1855.

Hozier filed a petition against the Caledonian Ry. Co., alleging that he was aggrieved by being charged nine shillings six pence, for traveling between Motherwell and Edinburgh, a distance of forty-three miles, while passengers traveling in the same train, and in the same class of carriage between Glasgow and Edinburgh, a distance of fifty-nine miles, were charged only two shillings; and that the through rates charged between Edinburgh and Glasgow amounted to an undue and unreasonable preference in favor of such through passengers over petitioner and others, traveling between Motherwell and Edinburgh, or Motherwell and Glasgow, and intermediate places.

1 Nev. & Mac., p. 28.

The petition was dismissed.

Lord Curriehill said: "The only case stated in the petition, is that passengers passing from Glasgow to Edinburgh, or from Edinburgh to Glasgow, are carried at a cheaper rate (*aggregate*) than passengers from Motherwell to either of these places. Now, that is an advantage, no doubt, to those passengers traveling between Edinburgh and Glasgow. But is it an *unfair* advantage over other passengers traveling between intermediate stations? The complainer must satisfy us that there is something *unfair* or *unreasonable* in what he complains of, in order to warrant any interference. Now, I have read the statements in the petition, and I have listened to the argument in support of it, to find what is *unreasonable* in giving that advantage to through passengers. What disadvantage do Motherwell passengers suffer by this? I think that no answer was given to this, except that there was none."

1 Nev. & Mac., pp. 31 and 32.

In the report of the case in the *Law Times*, Lord Curriehill is said to have added: "This petitioner's complaint may be likened to that of the laborer, who, having worked all day, complained

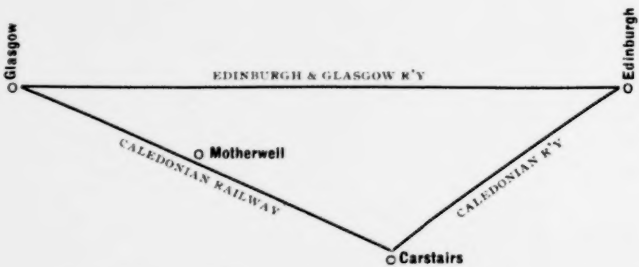
that others, who had worked much less, received a penny, like himself."

1 Nev. & Mac., p. 32, note 4.

That case was cited by this Court, in the case of the Interstate Commerce Commission vs. B. & O. R. R. Co., as holding, in substance, "that the allowance of a reduced through rate worked no injustice to passengers living on the line of the road who were obliged to pay at a greater rate"—(145 U. S., p. 282); and it was again cited and quoted from by this Court in T. & P. Ry. vs. I. C. C. (162 U. S., p. 222), known as the "Import" case.

The Hozier case certainly decides that to charge local passengers a greater compensation, *in the aggregate*, for a shorter distance, than is charged through passengers, for a longer distance, between competitive points, does not subject the local passengers "to any *undue or unreasonable* prejudice or disadvantage in any respect whatever," notwithstanding the passengers, through as well as local, may travel over the same line, in the same direction, in the same trains, and in the same class of carriages.

The following diagram sufficiently illustrates the competitive situation which existed between the Caledonian Ry. and the Edinburgh & Glasgow Ry.:



In the Hozier case, the Lord President based his judgment upon the fact that the petitioner had not shown any title or interest to maintain the proceeding; his opinion being that, before a case of undue preference can be made out, under the Act of 1854, the parties must stand "*pari passu* in the matter," and must be brought "*into competition*, in order to give them an interest to complain." See 1 Nev. & Mac., p. 30.

145 U. S., pp. 282, 283.

According to the opinion of the Lord President, it would be necessary, in this case, to show that the town of Troy stands in *pari passu* with the city of Montgomery, and that those two places are in competition with each other.

Lord Curriehill declined to found his opinion on the want of title or interest in the petitioner to maintain the proceeding, and based his judgment upon the merits, viz.: That while the carriage of passengers between the competitive points (Glasgow and Edinburgh) at a cheaper rate than passengers to or from non-competitive points was an advantage or preference to those passengers traveling between the competitive points (Glasgow and Edinburgh), it was not an *unfair* advantage, nor an *undue* preference of those passengers over passengers traveling to and from non-competitive points.

It is immaterial, therefore, whether the decision in the case be based upon the opinion of the Lord President, or upon the opinion of Lord Curriehill; for, in either event, it is equally valuable as an authority in my favor.

The case of Jones vs. E. C. Ry. Co., 1 Nev. & Mac., pp. 45-47, was decided in 1858.

It appeared in that case, that the Eastern Counties Ry. Co. managed and controlled a railway running from London, via Colchester, and Manningtree, to Harwich. It was about 50 miles from London to Colchester; and about 70 miles from London to Harwich. Passengers traveling from London to Harwich, or the reverse, *passed through Colchester*. The railway company charged for season tickets from Colchester to London (say 50 miles), £45 per year; while it is charged from Harwich, *through Colchester*, to London (say 70 miles), £20 per annum.

The Court refused a rule for an injunction. Williams, Judge, said: "For anything that appears, *there may be very good reasons for making such difference in price.* . . . At this moment *there is active competition at Reading between the Great Western and Southwestern Railways; the consequence is, that considerably less is charged for tickets from that place to London, and vice versa, than for intermediate stations.*" pp. 46, 47.

Wills, Judge, said: "To bring the case within the Act (of 1854) you must show, as we held the other day in the case of

Harris and the Cockermouth & Workington Railway Company, *that the journeys are substantially the same.*"

While it did not appear of record in the case that there was any competition between Harwich and London, and while there *was*, in fact, no rail competition, yet as Harwich was on the North Sea, and London was on the Thames River, the Court doubtless took judicial knowledge of the fact that there was at least *water* competition between Harwich and London.

The case decides that the fact that local passengers to, or from, non-competitive points, are charged a greater compensation *in the aggregate* for a shorter distance, than is charged through passengers for a longer distance between competitive points, does not determine that the local passengers are subjected "to any *undue or unreasonable* prejudice in any respect whatever;" notwithstanding the passengers, through, as well as local, may travel over the same line, in the same trains, and in the same direction.

. . . It decides that a journey between competitive points (London and Harwich) *is not substantially the same* as a journey between non-competitive points (London and Colchester). It recognizes the fact that active competition exists at points between which through passengers are carried, affords "*a very good reason for making a difference*" between the rates charged such through passengers, and the rates charged local passengers, at points where no competition exists.

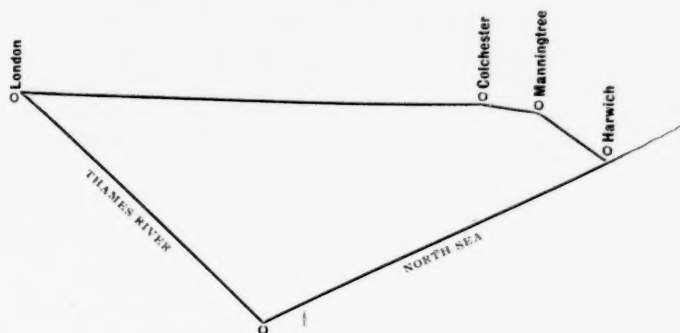
1 Nev. & Mac., p. 46

I submit that if competition affords *a good reason* for making a difference between competitive and non-competitive rates, it cannot be maintained that the transportation of local passengers, to or from non-competitive points, is done "under substantially similar circumstances and conditions" with the transportation of through passengers between competitive points, when competition forces the company to make the lower rate.

That case was cited by this Court in the case of the Interstate Commerce Commission vs. B. & O. R. R. Co., 145 U. S., p. 283.

The following diagram sufficiently illustrates the competitive

situation which existed between the Eastern Counties Ry., and the water routes:



The case of *Foreman et al. vs. Great Eastern Ry. Co.*, 2 Nev. & Mac., 202, was decided by the English Railway Commissioners in 1875.

It appeared that the complainants imported coal, in their own ships, from points in the north of England, to Great Yarmouth, and forwarded the coal to various stations on the defendant's railway, between Great Yarmouth and Petersborough.

The complainants stated that the defendant's rates for carrying coal from Yarmouth, to stations in the interior, at which complainants dealt, were unreasonably greater than the rates charged, in the opposite direction, from Petersborough to such stations; and that such difference in rates was made by the defendants for the purpose of favoring the carriage of coal from the interior, as against coal brought to Yarmouth by sea, and carried thence into the interior over the defendant's railway.

In brief, the complaint was that the defendants gave an undue preference to coal shipped from mines on their line in the interior to the sea coast, over coal shipped from the sea coast into the interior. The Commissioners found that it was true that the defendants did carry coal from the interior to London, Yarmouth, and other sea ports on their line, at exceptionally low rates; but that it was done for the purpose of meeting the competition existing at those places.

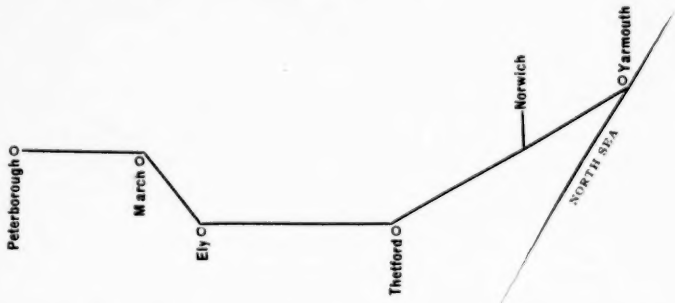
It appears that the rate from Petersborough to Thetford (51 miles), was 4s. 4d., while the rate from Petersborough to Yarmouth (100 miles), was only 3s. 5d. pp. 205, 206.

The Commissioners said :

“As, however, the complainants do not, as far as their trade in Yarmouth itself is concerned, use the Great Eastern Railway at all, the company cannot be said to prefer other traffic to theirs; NOR DOES THE TRAFFIC ACT PREVENT A RAILWAY COMPANY FROM HAVING SPECIAL RATES OF CHARGE TO A TERMINUS TO WHICH TRAFFIC CAN BE CARRIED BY OTHER ROUTES OR OTHER MODES OF CARRIAGE WITH WHICH THEIRS IS IN COMPETITION.”

2 Nev. & Mac., pp. 205, 206.

The following diagram sufficiently illustrates the competitive situation at Yarmouth, on the North Sea :



In that case, the rate from Petersborough to Thetford (the shorter distance point), was greater, *in the aggregate*, than the rate from Petersborough to Yarmouth (the longer distance point); and the only circumstance or condition to justify the preference shown to Yarmouth, was the sea *competition* which existed there, but which did not exist at Thetford.

The Foreman case was cited and quoted from by this Court, in *T. & P. Co. vs. I. C. C.* (162 U. S., p. 223), known as the “Import” case.

In *Harris vs. Cockermouth, etc., Ry.*, 1 Nev. & Mac., pp. 97-108, decided in 1858, the Court held it to be an undue preference for a railway company to concede to the owner of a colliery a lower rate than to the owners of other collieries *between the same*

points of departure and arrival, merely because the person favored had *threatened* to build a railway for his coal, and to divert his traffic from the railway.

I have heretofore said in Sections XLII. and XLIV., *that where the points of departure and arrival are the same*, whatever rates are conceded to one person, must be conceded to all persons shipping the same description of goods between those points; because, in such a case, it is impossible for there to be any difference in the circumstances or conditions of the different shipments *as affected by competition*. But, where either the points of departure or arrival are different, there may be a substantial dissimilarity in the circumstances and conditions, *as affected by competition*.

The distinction for which I contend is clearly recognized in the case last cited.

Cockburn, C. J., said :

"I quite agree that this Court has intimated, if not absolutely decided, that a company is entitled to take into consideration ANY circumstances, either of a general or of a local character, in considering the rate of charge which they will impose upon any particular traffic." . . . "As, for instance, in respect of terminal traffic, *there might be competition with another railway*; and in respect to terminal traffic as distinguished from intermediate traffic, it might well be that they could afford to carry goods over the whole line cheaper, or proportionately so, than they could over an intermediate part of the line."

1 Nev. & Mac., pp. 102, 103.

And Crowder, J., said :

"So, also, as my Lord has put it, *there are many cases in which a company may be justified in making a difference between the rate charged for the conveyance of goods taken from one end of the line to the other*, and the rate charged for the conveyance of goods taken to an intermediate point between the termini."

1 Nev. & Mac., p. 107.

The case of *Harris vs. Cockermouth, etc., Ry.* was cited by this Court in *T. & P. Ry. vs. I. C. C.*, 162 U. S., pp. 223, 224, known as the "Import" case, and the distinction recognized by Cockburn, C. J., was quoted by this Court. 162 U. S., p. 224.

In the case of *Ransome vs. E. C. Ry. Co.*, 1 Nev. & Mac., p. 120, decided in 1858, Crowder, Judge, said:

“There are MANY circumstances which may induce a railway company to charge, on parts of their line, rates which leave little or no remuneration, *as the proximity of rivers, or canals, or other lines of railway, which may enter into competition with them and materially affect their interests.*”

The case of *Budd vs. L. & N. W. R. R.* was decided June 18, 1877. 4 Eng. Ry. and Canal Traffic cases, 393, Brown & Macnamara.

It may be relied upon by counsel for the Appellant, as an authority directly in point.

The plaintiffs were the proprietors of iron and tin-plate works, situate near defendant's railway, and about twelve miles from Swansea. The defendant charged plaintiffs higher rates on plaintiffs' traffic to Liverpool, than were charged by defendant upon similar traffic to other manufacturers whose works were situated *within a radius of six miles of Swansea.*

There was communication by sea between Swansea and Liverpool; and defendant's rate (from Swansea) was fixed to enable defendant to compete with the sea carriage. pp. 394, 395.

Chief Baron Kelly was of opinion that the defendant's conduct amounted to an undue preference and advantage to the manufacturers *within the six miles radius of Swansea.* He said that he thought the Budd case was “identical in principle with *Evershed vs. London & Northwestern Ry. Co.*”

Barons Cleasby and Huddleston also rested their decisions entirely upon the *Evershed* case. pp. 396, 397.

I have heretofore shown in section XLIV. that in the *Evershed* case, the Railway Company discriminated between persons *shipping from the same point of departure, (Burton-upon-Trent), to the same points of arrival.*

The Budd case could not be “identical in principle” with the *Evershed* case, unless the plaintiff's works, in the Budd case, were, in the opinion of the Court, entitled to be considered *as within the Swansea District*, notwithstanding they were twelve miles distant from the town of Swansea.

The defendant Railway Company seems to have arbitrarily created "a District" or "Group" at Swansea, with a radius of six miles; and no reason was shown why the radius was not made twelve miles instead of six. If the radius had been twelve miles, the plaintiff's works would have been included within the Swansea "District" or "Group," and would have been entitled to the same rates as similar works situated within that District.

If plaintiff's works had been included within the Swansea "District" or "Group," the Budd case would have been "identical in principle" with the Evershed case; because the shipments would have all been made *from the same point of departure* (i. e., the Swansea District or Group), *to the same point of arrival* (i. e., Liverpool); and, therefore, all of the shipments from that District or Group would have been entitled to the same rates.

There is reason to believe that the Court, in Budd's case, was of opinion that the plaintiff's works were entitled to be considered as within the Swansea District or Group; for Kelly, C. B., remarked that "a manufacturer who happened to be half a mile within the (six miles) radius, would be preferred to one immediately without." p. 396.

In the case of the Liverpool Corn Traders' Association vs. L. & N. W. Ry. Co., 7 Ry. & Canal Traffic cases, on p. 135, it was said that the Budd case is in conflict with the subsequent Scotch case of Murray vs. G. & S. W. Ry. Co., and with the case of the Denaby Main Colliery Co. vs. M. S. & L. Ry. Co., on the point that an action will not lie to recover overcharges made in violation of the Act of 1854, against undue preference; and on page 142 this language was used: "Budd's case was cited with the view *that a desire to compete would not justify a preference*; but the doubts to which that case is subject, make it *very inconclusive as authority*."

The Court of Appeals, in 1892, stated that it was unable to agree with the Budd case, if it involves the proposition that competition cannot be taken into account at all.

Law Rep., 1892; 2 Q. B., 248; Phipps vs. L. & N. W. Ry. Co.

In the case of T. & P. Ry., vs. I. C. C., 162 U. S. 224, known as the "Import" case, this Court said that the Budd case has been "much modified if not fully overruled by the later cases."

In March, 1892, the English Court of Appeal decided the case of the Executors, etc., of Pickering Phipps vs. L. & N. W. Ry.

Law Rep., 1892; 2 Q. B., p. 229.

The late Pickering Phipps was the owner of iron furnaces, which were situated at Duston, on the line of the London & Northwestern Ry., at a distance of about sixty miles east from Great Bridge, one of the pig-iron markets.

There were iron furnaces (not owned by Phipps) situated at Butlins, and at Islip, which were also on the L. & N. W. Ry. They were east of Duston, and therefore more distant than Duston, from Great Bridge. Butlins was seventy-one miles, and Islip eighty-two miles, east of Great Bridge.

Duston was dependent for its railway carriage on the L. & N. W. Ry. alone; but Butlins and Islip both had access, not only to the L. & N. W. Ry., but also to the Midland Ry.

The L. & N. W. Ry. had, for charging purposes, grouped Butlins and Islip together; and, although it carried the Islip pig iron eleven miles further than the Butlins pig iron, it made the same charge from both places. The Midland Ry. also charged the same rate, and the same total charge per ton, for the carriage from Butlins and Islip.

The L. & N. W. Ry., which carried the Butlins pig iron eleven miles further, and the Islip pig iron twenty-two miles further than the Duston pig iron, charged Butlins 95-100 of a penny per ton, per mile, and Islip 84-100 of a penny per ton, per mile, while it charged Duston 1.5-100 of a penny per ton, per mile; so that the total charge per ton of pig iron from Duston to the western market was 5s 2d, while the total charge per ton from either Butlins or Islip was 5s 8d for the same class of merchandise. The executors of Phipps complained to the English Railway Commissioners that to charge for the carriage of pig iron from Butlins and Islip to the market, only 6d more than for the carriage from Duston, was, having regard to the difference of distance, an undue preference by the L. & N. W. Ry. as compared with Duston; and the complaint was based on the second section of the Railway and Canal Traffic Act of 1854, which prohibits "any undue or unreasonable preference or advantage to or in favor of any particular person or company or any particular description of traffic." pp. 229, 230, 231.

The L. & N. W. Ry. claimed that the comparatively lower rates charged to Butlins and Islip were forced upon it by the competition of the Midland Ry. p. 231.

The English Railway Commissioners held that the L. & N. W. Ry., in fixing the rates in question, *was entitled to take into account the circumstances that Butlins and Islip had access to another line of railway which was in competition with its own*, and that no sufficient case of undue preference had been made out against it. pp. 231, 232.

The executors of Phipps appealed, and the decision of the Commissioners was affirmed.

Lord Herschell, in the course of his opinion, used this language:

"I cannot but think that *a lower rate which is charged from a more distant point by reason of a competitive route which exists thence, is one of the circumstances which may be taken into account* under those provisions, and which would fall within the terms of this enactment (Act of 1888, section 2, subsection 27), quite as much as the case to which I have called attention. Suppose that to insist on absolutely equal rates would practically exclude one of the two railways from the traffic, *it is obvious that those members of the public who are in the neighborhood where they can have the benefit of this competition, would be prejudiced by any such proceedings*. And further, inasmuch as competition undoubtedly tends to diminution of charge, and the charge of carriage is one which ultimately falls upon the consumer, it is obvious that the public have an interest in the proceedings under this Act of Parliament not being so used as to destroy a traffic which can never be secured but by some such reduction of charge, and the destruction of which would be prejudicial to the public by tending to increase prices. Therefore it seems to me that, *whether you look at the Act of 1854, by itself, or whether you look at it in connection with the provisions of subsection 2 of section 27 of the Act of 1888, to which I have been referring, it is impossible to say that there is anything in point of law which compels the tribunal to exclude from consideration this question of competing routes.*" p. 245.

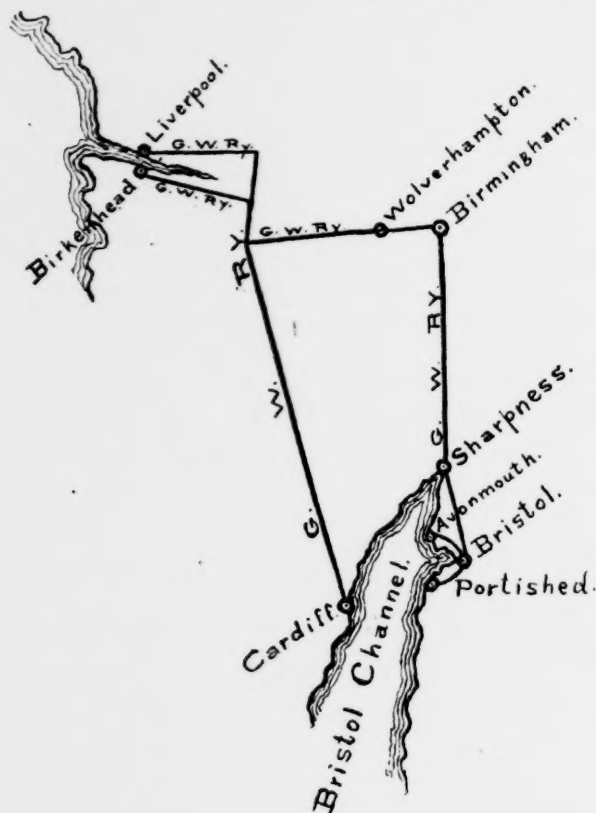
The following diagram sufficiently illustrates the competitive situation in that case:



The Phipps case was cited approvingly, and quoted from by this Court, in *T. & P. Ry. vs. I. C. C.*, 162 U. S., p. 224-230; also by the Sixth Circuit Court of Appeals, in *D. G. H. & M. Ry. vs. I. C. C.*, 74 Fed. Rep., p. 817; also by the Circuit Court for the Middle District of Tennessee, in *I. C. C. vs. L. & N. R. R. Co.*, 73 Fed. Rep., pp. 420-423; also by the Circuit Court of Appeals in this case (Trans. p. 416); also, in *Liverpool Corn Traders' Association vs. G. W. Ry. Co.*, 8 Ry. & Can. Traf. Cases, pp. 127-145.

The case of the *Liverpool Corn Traders' Association vs. G. W. Ry. Co.*, 8 Ry. & Can. Traf. Cases, p. 114, was decided by the English Railway and Canal Commissioners in 1892; and their decision was affirmed by the Court of Appeal.

The following diagram sufficiently shows such of the lines of the Great Western Railway as were involved in that case :



Liverpool and Birkenhead are at the mouth of the Mersey, and on opposite sides of that river. They are connected with Wolverhampton and Birmingham, by the Great Western Railway, by other railways, and by a canal. Sharpness, Bristol, Avonmouth, Portishead and Cardiff are on the Bristol channel, and the Severn River; and are designated as the "Western Ports." They are connected with Wolverhampton and Birmingham by the Great Western Railway, by the Midland Railway, and by a canal.

The complaint was that the rates of the Great Western Railway on grain and flour to Wolverhampton and Birmingham, in the interior, are lower from Sharpness and the other "Western Ports," than they are from Birkenhead, and Liverpool; and that they amount to an undue preference.

The complaint was dismissed.

Wills, J., said that the rates of the Great Western Ry. from the "Western Ports" to the Midland markets (i. e., Wolverhampton and Birmingham), have been fixed with reference to an effective competition by the river and canal routes; that they have been established in the interest of said company, without any purpose of preferring one locality over the other; and that without them said company would lose the "Western" traffic altogether; that *Parliament never intended that the natural competitions of trade between one district and another should be stifled, and the interests of the consumer subordinated to those of the manufacturer or the merchant.* "The markets of Birmingham and Wolverhampton are most important centres of distribution and of supply to a very large area. The articles in question are of primary necessity. To destroy the competition between the 'Western Ports' and Liverpool would be to place the Midland markets more or less at the mercy of Liverpool, and greatly to aggravate the consequence of those disturbances of trade which are continually taking place, whether by failure of supply from which Liverpool draws its corn and grain, by difficulties in the labor market, either in the port or on the railway system, or by any of the innumerable and unforeseen circumstances which from time to time derange or cripple the trade of a particular market."

8 Ry. & Can. Traf. Cases, pp. 119, 120.

The English Railway & Canal Traffic Act, 1888, sec. 27, subsec. 2, provides that no railway company shall make, nor shall the Commissioners sanction, any difference in the tolls, rates, or charges made for, or any difference in the treatment of home and foreign merchandise, in respect of the same, or similar services.

In the case of the Mansion House Association, etc., vs. The London & South-Western Ry. Co. Law Rep., 1895, 1 Q. B., p. 927, it was held that the effect of said proviso is not to prohibit all inequalities as between home and foreign merchandise, but that if the railway company proves facts which would justify admitted

differences, had the goods in both cases been home goods, the company are not debarred from relying on those facts merely because the goods which receive the benefit of the difference are of foreign origin. p. 927.

In that case, the complaint was that the defendant company gave an undue preference by charging lower rates on foreign merchandise, than on home merchandise from Southampton to London; and Collins, J., held that it would be open to the company to justify "by urging all those topics *which have been recognized by many decisions*, and are recognized by sub section 2, such as difference of conditions reducing the cost and increasing the profit of the company, *the existence of competition by land or water from Southampton to London*," etc. p. 932.

Again, he said :

"I think the object of the section was to level differences, not to create arbitrary inequalities between the treatment of home and foreign merchandise; and *I can see no reason or principle in leaving out of account the fact of a rival route by rail or water from the point of departure in this country to the point of arrival, in the case of goods coming from abroad, and taking it into account as it clearly may be taken into account, where the comparison is between home goods only.*" p. 935.

The case of Mansion House Association, etc., vs. L. & N. W. Ry. Co., was cited approvingly, and quoted from, by the U. S. Circuit Court for the Middle District of Tennessee, in I. C. C. vs. L. & N. R. R. Co., 73 Fed. Rep., pp. 423, 424.

LI.

AMERICAN CASES ON UNDUE PREFERENCE.

The Constitution of Colorado provides that "all individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager, or employe thereof, shall give any preference to individuals, associations, or corporations in furnishing cars or motive power."

The Atchison, Topeka & Santa Fe R. R. Co. (hereinafter called the "Atchison" R. R. Co.) operated a railroad from Kansas City to Pueblo, about 634 miles. When its line first reached Pueblo, it had no connection of its own with Denver. The Denver & Rio Grande R. R. (hereinafter called the "Rio Grande" R. R.) was built and running between Denver and Pueblo; but the gauge of its track was different from that of the "Atchison" R. R. Other companies, occupying different routes, had, at the time, substantially the control of the transportation of passengers and freight between the Missouri River and Denver. The "Atchison" R. R. Co., being desirous of competing for this business, entered into an arrangement, as early as 1879, with the "Rio Grande" R. R. Co., for the formation of a through line of transportation for that purpose.

By this arrangement, a third rail was to be put down on the track of the "Rio Grande" road, so as to admit of the passage of cars continuously over both roads; and terms were agreed upon for doing business, and for the division of rates. The object of the parties was to establish a new line, which could be worked with rapidity and economy, in competition with the old ones. In the division of rates, the "Rio Grande" Company was allowed compensation at the rate of a mile and a half, for every mile of actual haul.

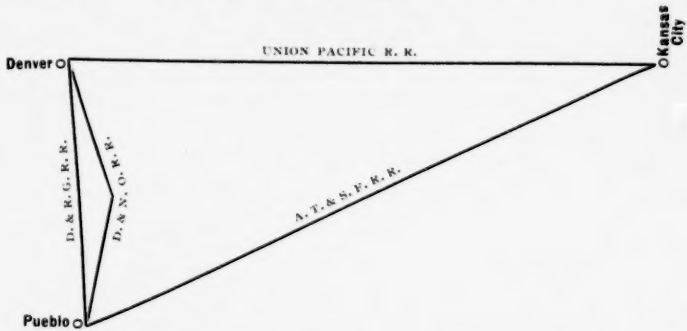
As the distance from the Missouri River to Pueblo by this route was about the same as to Denver by the competing routes, the through rates over this line to and from Denver, were usually

made about the same as rates to and from Pueblo. This was necessary to compete with other lines for Denver business. Afterward, an agreement was made between the "Atchison" R. R. Co. and its competitors, by which rates were established between Denver and the Missouri River, and arrangements made for a division of business among those companies, and for the regulation of their conduct toward each other, with a view to avoiding competition between themselves or from others.

In 1882 the Denver & New Orleans R. R. Co. (hereinafter called the "New Orleans" R. R. Co.) completed its road between Denver and Pueblo, and requested of the "Atchison" R. R. Co. that it be placed upon an equal footing with the "Rio Grande" R. R. Co. in all traffic over the "Atchison" R. R., for which the "New Orleans" R. R. Co. and the "Rio Grande" R. R. Co. were competitors.

This request was refused, and the "Atchison" R. R. Co. continued its through business with the "Rio Grande" R. R. Co. as before, and declined to deliver freight or passengers at the junction of the "New Orleans" R. R., or to give or take through bills of lading, or to sell or receive through tickets, or to check baggage over that line. All passengers or freight coming from, or destined for that line, were taken or delivered at the regular depot of the "Atchison" Company in Pueblo, *and the prices charged were according to the regular rates to and from that point, which were more than the "Atchison" Company received on a division of through rates to and from Denver under its arrangements with the "Rio Grande" Company.*

The competitive situation at Denver, and Pueblo, is sufficiently shown by the following diagram :



The "New Orleans" Company filed a bill against the "Atchison" Company; the general purpose of which was to compel the "Atchison" Company to unite with the "New Orleans" Company, in forming a through line of railroad transportation to and from Denver over the "New Orleans" road, with all the privileges as to exchange of business, *division of rates*, sale of tickets, issue of bills of lading, checking of baggage, etc., that were, or might be granted to the "Rio Grande" R. R. Co., or to any other railroad company competing with the "New Orleans" Company for Denver business. 110 U. S., 668, 669, 670, 671, A., T. & S. F. Ry. vs. D. & N. O. Ry.

This Court, while holding that "both by the common law, and by the Constitution of Colorado, a railroad company is prohibited from discriminating unreasonably in favor of, or against another company seeking to do business on its road" (p. 682), said that it did not follow that a company "must under all circumstances give one connecting road the same facilities, and the *same rates* that it does to another, with which it has entered into contract relations for a continuous through line, and arranged facilities accordingly." (p. 685.) And as to the rates insisted upon by the "New Orleans" Company, the Court used this language (pp. 683 and 684): "That the price must be reasonable is conceded, and it is no doubt true that in determining what is reasonable, the prices charged for business coming from, or going to, other roads connecting at Pueblo, may be

taken into consideration. But the relation of the 'New Orleans' Company to the 'Atchison' Company *is that of a Pueblo customer*, and it does not necessarily follow that the price which the 'Atchison' Company gets for transporting to and from Pueblo, on a division of through rates among the component companies of a through line to Denver, must settle the Pueblo local rates. It may be that the local rates to and from Pueblo are too high, and that they ought to be reduced, but that is an entirely different question from a division of through rates. There is no complaint of discrimination against the 'New Orleans' Company in respect to the regular Pueblo rates, *neither is there anything, except the through rates, to show that the local rates are too high.*

"The bill does not seek to reduce the local rates, but only to get their company put in the same position as the 'Rio Grande' Company, on a division of through rates. This cannot be done until it is shown that the relative situation of the two companies with the 'Atchison' Company, both as to the kind of service, *and as to the conditions under which it is to be performed, are substantially the same*, so that what is reasonable for the one must necessarily be reasonable for the other.

"When a business connection shall be established between the 'New Orleans' Company and the 'Atchison' Company at their junction, and a continuous line formed, different questions may arise; but so long as it is now, we cannot say that, as a matter of law, the prices charged by the 'Atchison' Company for the transportation of persons and property coming from or going to the 'New Orleans' road, must necessarily be the same as are fixed for the continuous line over the 'Rio Grande' Railroad."

I submit that the opinion of the Court, in effect, establishes the following propositions:

First: That in order to meet competition, two or more railroad companies may, by voluntary agreement, form a joint through line, and that the joint through rate charged over such line may be less than the sum of the locals, or of the separate through rates of the roads forming the line.

Second: That the proportion of the joint through rate which each of the companies receives, may lawfully be less than the

local rates, or less than separate through rates charged by such company at the time, for transportation over the entire length of its own road ; and

Third : That freight transported by such joint through line between two competitive points is not carried *under substantially the same circumstances and conditions* as other freight transported by it passing between one of said competitive points, and a point which is not competitive, notwithstanding the freight in both cases may be carried in the same cars, and in the same trains.

In other words, notwithstanding the *service rendered by a company* may be the same in both cases, *so far as the cost of transportation is concerned*, the fact of *competition* in the one case, and not in the other, creates a *substantial dissimilarity in the circumstances and conditions of the transportation*. And that is precisely the point for which the Appellees in this case are now contending.

I submit that the case, in effect, establishes :

First : That in order to meet competition at Montgomery, the Alabama Midland Ry. Co. and its connections have the right to form a joint through line from New York to Montgomery ; and that the joint through rate from New York to Montgomery may, lawfully, be less than the sum of the locals, or of the separate through rates of those roads.

Second : That the proportion of the joint through rate, from New York to Montgomery, which is received by the Alabama Midland Ry., may, lawfully, be less than the separate through rate charged by said road for transportation from Bainbridge to Montgomery.

Third : *That freight transported between the competitive points, New York and Montgomery, is not transported under substantially similar circumstances and conditions as freight transported from New York to Troy*, a non-competitive local station on the Alabama Midland Ry. ; and the fact that both shipments may be transported from Bainbridge to Troy, by the Alabama Midland Ry., in the same cars, and trains, is a matter of no consequence.

The case of *A. T. & S. F. R. R. Co. vs. D. & N. O. R. R. Co.* is cited, and quoted from, by this Court in *T. & P. Ry. vs. I. C. C.*, 162 U. S., 230, 231, known as the "Import" case.

The sixth section of the Act of Congress, passed July 1, 1862, relative to the Union Pacific R. R. Co., provides that the Government shall at all times have the preference in the use of the railroad "at fair and reasonable rates of compensation, not to exceed the amount paid by private parties *for the same kind of service.*"

104 U. S., 663, *U. P. R. R. vs. U. S.*

In a case between the same parties, reported in 117 U. S., 362, it appeared that the company's uniform rate for the transportation of passengers between Council Bluffs and Ogden, when passengers purchased tickets at either of those places, was \$78.50 each; but, by contracts with connecting railroad companies who sold joint through tickets at reduced rates from New York, San Francisco, and other places over their own, and the Union Pacific R. R., the latter company received, as its proportion of the joint through tickets, only \$54 for each joint through passenger, carried between Council Bluffs and Ogden. Of course, the reduced rates, at which the joint through tickets were sold, were the result of competition by other lines, at the points between which the joint through tickets were sold.

The contention on the part of the United States (p. 363) was, that passengers carried on its account between Council Bluffs and Ogden, should be carried at the same rates, as were charged for joint through passengers passing between those points as part of the journey over the entire joint through line; and the question of law involved in that contention, as stated by this Court, was, "whether the service rendered in transporting a local passenger between the two points is, in law, identical with that rendered in transporting a through passenger between the same points as part of the transit over the distance of the whole line;" and this Court held that the service in the two cases was not identical.

It does not appear in the report, but it was doubtless the fact, that the local passengers were carried by the Union Pacific R. R. in the same trains, and in the same class of cars, as the joint

through passengers. Or, in other words, that the *service* rendered by the company was precisely the same, *so far as cost, risk, etc., were concerned*, in the case of a joint through passenger, as in the case of a local passenger; and the only reason why the transportation of the joint through passenger was not done *under substantially similar circumstances and conditions*, as the transportation of the local passenger was, *that in the former case, competition controlled the rate for transportation, while in the latter it did not.*

The case of the U. P. R. R. vs. U. S., 117 U. S., 362, was cited by this Court in T. & P. Ry. vs. I. C. C., 162 U. S., 231, known as the "Import" case.

In the case of Ragan & Buffet vs. Aiken, 9th Lea (Tenn.), 619, it appeared that the defendant was the owner of a railroad about fifteen miles long, running from Rogersville to a junction with the E. T., V. & G. R. R. The complainants were merchants at Rogersville, and they alleged that they had been required by the defendant to pay freight at a rate of from twenty to twenty-five cents per hundred pounds; the gross amount of their payments aggregating about four thousand dollars; that the defendant, as an inducement to other merchants in Lee County, Va., and Hancock County, Tenn., to have their goods shipped to Rogersville, over defendant's railroad, instead of by other routes, had entered into contracts not to charge them exceeding fifteen cents per hundred pounds on similar freights; and complainants insisted that such discrimination was illegal. The Supreme Court of Tennessee (p. 622) said: "That in determining whether a company has given an *undue preference* to a particular person, the court may look to the interests of the company." The Court further said that: "If the charge on the goods of the party complaining is reasonable, and such as the company would be required to adhere to *as to all persons in like condition*, it may nevertheless lower the charge of another person, *if it be to the advantage of the company, not inconsistent with the public interest, and based on a sufficient reason.* It is obvious that the intention of the defendant, in this instance, was not to discriminate against the complainants in favor of any person of the same place, and *in the same condition.* His object was to get business for his road from persons at a distance from its terminus, *which otherwise would reach its destination by a different route.* Under these cir

cumstances we cannot see that the contracts complained of are against public policy, or that complainants have been damaged, if the charges on their goods were reasonable."

It is submitted that the case last cited is a direct authority for the position, that competitive traffic is not "in the same condition" as traffic which is not competitive; and that the fact that a carrier is forced to accept less rates between competitive points, than it can afford to accept between non-competitive points, does not constitute an undue preference of the competitive points.

In the case of the Interstate Commerce Commission vs. B. & O. R. R. Co., 43 Fed. Rep., 50, 51, Judge Jackson said: "Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage, or subject to undue prejudice or disadvantage, persons or traffic similarly circumstanced, the Act to regulate commerce leaves common carriers as they were at common law, free to make special contracts *looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce*, and generally to manage their important interests upon the same principles which are recognized as sound, and adopted in other trades and pursuits. Conceding the same terms of contract to all persons equally, may not the carrier adopt both wholesale and retail rates for its transportation services?" See pp. 50, 51.

Again, as regards the "undue preference" branch of the English Acts, Judge Jackson quotes from the Report of the English Amalgamation Committee of 1872, p. 13, as follows: "The effect of the (English) decisions seems to be that a company is bound to give the same treatment to all persons equally under the same circumstances; but that there is nothing to prevent a company, if acting with a view to its own profit, *from imposing such conditions as may incidentally have the effect of favoring one class of traders, or one town, or one portion of their traffic*, provided the conditions are the same to all persons, and are such as to lead to the conclusion that they are really imposed for the benefit of the railway company." See p. 53.

Again: Judge Jackson said, that the English cases “establish the rule that in passing upon the question of undue or unreasonable preference or disadvantage, it is not only legitimate, but proper, to take into consideration, besides the mere differences in charges, various elements, such as the *convenience of the public*, the fair interests of the carrier, *the relative quantities or volume of the traffic involved*, the relative cost of the services and profit to the company, *and the situation and circumstances of the respective customers with reference to each other as COMPETITIVE or otherwise.*” See pp. 53 and 54.

The decision of Judge Jackson in the case of the Interstate Commerce Commission vs. B. & O. R. R. Co. (43 Fed. Rep., p. 49) was affirmed by this Court. 145 U. S., p. 263.

Mr. Justice Brown, speaking for this Court, said:

“It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust and unreasonable. p. 276. . . . Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust.” p. 277.

Again, speaking of the sale of a ticket for a number of passengers at a less rate than for a single passenger, he said: “It does not operate to the prejudice of the single passenger, *who cannot be said to be injured by the fact that another is able in a particular instance to travel at a less rate than he.* If it operates injuriously to any one it is the rival road, which has not adopted corresponding rates; but, as before observed, *it was not the design of the act to stifle competition, nor is there any legal injustice in one person procuring a particular service cheaper than another.* p. 281. . . . If these tickets were withdrawn *the defendant road would lose a large amount of travel, and the single-trip passenger would gain absolutely nothing.* p. 281. The language of Judge Jackson was quoted approvingly by this Court, in T. & P. Ry. vs. I. C. C., 162 U. S., pp. 232, 233, known as the “Import” case; and by the Circuit Court for the Middle District of Tennessee, in I. C. C. vs. L. & N. R. R. Co., 73 Fed. Rep., p. 426.

LII.

SUCH ADVANTAGES AS MONTGOMERY MAY ENJOY OVER TROY
RESULT FROM CAUSES OVER WHICH THE APPELLEE
RAILROAD COMPANIES HAVE NO CONTROL.

The Act to Regulate Commerce declares it to be unlawful *for any common carrier* subject to the Act, "to make or give any undue or unreasonable preference or advantage to any particular . . . locality or any particular description of traffic," etc.

The Act does not hold a common carrier responsible for any preference or advantage however great it may be, unless it be occasioned *by some wrongful act of the carrier*.

As between Montgomery and Troy, it must be remembered that Montgomery possessed great natural advantages over Troy, before any of the railroads involved in this controversy were dreamed of.

Before the Alabama Midland Railway was built, freight from New York was carried by ocean to Mobile, and thence by the Alabama River to Montgomery. From Montgomery it was doubtless hauled in wagons to Troy, 52 miles, at a wagon rate that was very much higher than the present railroad rate.

We see, that in those early days, the "preference or advantage" in favor of Montgomery, or the "discrimination" against Troy was much greater than it is now. But as the "preference or advantage" in favor of Montgomery, or the "discrimination" against Troy, in those days, was manifestly, the act of God, no one ever assumed to characterize it as "undue," or "unjust." The "preference" or "advantage" which Montgomery then enjoyed over Troy, instead of being denounced as "undue or unreasonable," was recognized as justly due to Montgomery, on account of her natural advantage of location; and every one regarded it as perfectly "reasonable" that she should enjoy the blessings which God had given her.

When the Alabama Midland Railway was constructed from Montgomery to Troy, that company *recognized* the "preference or advantage" which the Almighty had shown to Montgomery; but so far from doing anything to increase the "prejudice or

disadvantage," under which Troy then labored, the company reduced the rate from Montgomery to Troy, by the difference between wagon rates and rail rates.

The completion of the Alabama Midland Railway, through Troy to Montgomery, had the effect to change the *relative* geographical relation which had previously existed between Troy and Montgomery with respect to New York; so that Troy became geographically nearer than Montgomery to New York. And, had there been nothing else in the case, Troy would have become equitably entitled to lower rates than Montgomery.

The *geographical* relation now existing between Troy and Montgomery with respect to New York, is of no consequence, *so long as* Montgomery can use the Alabama River and the ocean, and the various part water and part rail lines and the all-rail lines which center there, but which do not reach Troy. The question is one of *strategical* rather than of *geographical* relations; and Montgomery has a better *strategical* position than Troy can possibly attain.

If the Alabama Midland Railway and connections should raise the rates from New York to Montgomery so as to make them the same as the rates from New York to Troy, the result would be:

First: The Alabama Midland Railway and connections would be deprived of all the traffic which they have heretofore carried from New York to Montgomery.

Second: Montgomery and New York would be deprived of the Alabama Midland Railway and its connections as a competing line.

But in no event could the relative position of Troy, as compared with Montgomery, be in any way improved.

In the case of the Interstate Commerce Commission vs. B. & O. R. R. Co., 145 U. S., page 281, Mr. Justice Brown, in discussing what would be the effect of requiring the B. & O. R. R. Co. to withdraw the "party-rate" tickets from sale, said:

"If these tickets were withdrawn, the defendant road would lose a large amount of travel, and the single trip passenger would gain absolutely nothing."

And so, in this case, if the Alabama Midland Railway and connections were ordered to raise the joint through rates from New York to Montgomery, to the rates now charged from New York to Troy, while they would lose a large amount of traffic, Troy "would gain absolutely nothing."

In considering the question of undue preference as between Montgomery and Troy, it must be borne in mind that while Troy has the advantage of being nearer than Montgomery to New York, Montgomery has the advantage of having the Alabama River and several part rail and part water lines, and several all-rail lines, from New York, none of which run to Troy. In the case of the *Executors of Phipps vs. L. & N. W. Ry. Co.*, Law Rep. (1892), 2 Q. B., p. 242, the English Court of Appeals used this language:

"It is said that it is unfair to the trader who is nearer the market, that he should not enjoy the full benefit of the advantage to be derived from his geographical situation, at a point on the railway nearer the market, than his fellow-trader, who trades at a point more distant; but I cannot see, looking at the matter as between the two traders, why the advantageous position of the one trader in having his works so placed *that he has two competing routes*, is not as much a circumstance to be taken into consideration, as the geographical position of the other trader, who, though he has not *the advantage of competition*, is situated at a point on the line geographically nearer the market."

"Why the logical situation, in regard to its proximity to the market, is to be the only consideration to be taken into account, in dealing with the question, as a matter of what is reasonable and right as between the two traders, I cannot understand. Of course, if you are to exclude this from consideration altogether, *the result must inevitably be to deprive the trader who has the two competing routes of a certain amount of advantage which he derives from that favorable position of his works*," p. 242.

The language copied from the Phipps case was quoted by this Court, in *T. & P. Ry. vs. I. C. C.*, 162 U. S., p. 229, known as the "Import" case; and by the Circuit Court for the Middle District of Tennessee, in *I. C. C. vs. L. & N. R. R. Co.* 73 Fed. Rep. p. 422.

LIII.

THE HISTORY OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE.

The English Railway Statutes, passed prior to the Act to Regulate Commerce, contain no provision similar to the 4th section of that Act.

On January 6, 1886, Hon. John H. Reagan introduced in the House of Representatives, H. R. 2412, known as the "Reagan Bill."

Cong. Rec., Vol. 17, p. 286.

On March 8, 1886, Mr. Reagan reported as a substitute for H. R. 2412, a bill known as H. R. 6657.

Cong. Rec., Vol. 17, p. 2196.

On January 18, 1886, Senator Cullom introduced in the Senate S. 1093, known as the "Cullom Bill."

Cong. Rec., Vol. 17, p. 698.

On February 16, 1886, Senator Cullom reported as a substitute for Senate Bill 1093, a bill known as S. 1532.

Cong. Rec., Vol. 17, p. 1464.

Senate Bill 1532 was debated, and amended, and passed the Senate on the 12th day of May, 1886.

Cong. Rec., Vol. 17, pp. 4396 to 4423.

The bill was debated, and amended, in the House. The result of the amendment by the House was, that all of Senate Bill 1532 was stricken out, except the enacting clause, and, in lieu thereof, House Bill 6657 was inserted.

Cong. Rec., Vol. 17, p. 7277. Remarks by Mr. Reagan.

The Senate refused to concur in the House amendment, and a Conference Committee was appointed. The Committee on Conference met, and recommended that the House recede from its amendment, and agree to the bill of the Senate, with an amendment thereto, in the nature of a substitute, and that the Senate agree to the same.

The Conference Bill was passed by the Senate January 14, 1887; it was passed by the House January 21, 1887; it was ap-

proved by the President February 4, 1887; and became what is now known as the "Act to Regulate Commerce."

The "Reagan Bill" contained no provision for the appointment of an Interstate Commerce Commission. The Commission was created by the "Cullom Bill."

The fourth section of the "Reagan Bill," H. R. 6657, was as follows:

"That it shall be unlawful for any person or persons engaged in the transportation of property as provided in the first section of this Act to charge or receive any greater compensation for a similar amount and kind of property, for carrying, receiving, storing, forwarding, or handling the same, *for a shorter than for a longer distance, which includes the shorter distance, on any one railroad*; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated by it under a contract, agreement, or lease by such corporation."

It will be noticed that where there was a similar amount and kind of property transported, and where the longer distance included the shorter distance, the fourth section of H. R. 6657 contained a prohibition against charging more for a shorter than for a longer distance, which was absolute and unconditional; and that no provision was made for relief by a commission.

As the "Reagan Bill," H. R. 6657, was rejected, it is evident that Congress did not intend to enact an absolute and unconditional prohibition against charging more for a shorter than for a longer distance, even where the longer distance included the shorter.

The long and short haul clause, as it originally appeared in the "Cullom Bill," S. 1532, was as follows:

"That it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or property subject to the provisions of this Act for a shorter than for a longer distance over the same line, in the same direction, and from the same original point of departure; *Provided, however*, that upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of pas-

sengers or property ; and the Commission may from time to time make general rules covering exceptions to any such common carrier, in cases where there is competition by river, sea, canal, or lake exempting such designated common carrier in such special cases from the operation of this section of this Act ; and when such exceptions shall have been made and published, they shall have like force and effect as though the same had been specified in this section."

It will be noticed that the prohibition against charging more for a shorter than for a longer distance, as it originally appeared, in the 4th section of the "Cullom Bill," S. 1532, was as absolute and unconditional as the prohibition contained in the ' Reagan Bill,' H. R. 6657 ; and that the only material difference between them was, that under the 4th section of the "Cullom Bill," S. 1532, the carrier might obtain permission from the Commission to make the greater charge for the shorter distance. But, unless the carrier obtained such permission from the Commission, the prohibition against making a greater charge for a shorter distance was, for all practical purposes, as absolute and unconditional under the 4th section of the "Cullom Bill," S. 1532, as it was under the 4th section of the "Reagan Bill," H. R. 6657.

It may be argued that under the 4th section of the Act to Regulate Commerce, as finally passed, a carrier can *in no case* of competition lawfully charge more for a shorter than for a longer distance, unless he shall have previously obtained the permission of the Commission. The argument may be that even competition by water will not justify a carrier in making a greater charge for a shorter than for a longer distance, unless the permission of the Commission be previously obtained. *If such an argument be sound, it is very strange that Congress did not adopt the 4th section, as it originally appeared in the "Cullom Bill," S. 1532.*

LIV.

HISTORY OF FOURTH SECTION—CONTINUED.

The long and short haul clause of the "Cullom Bill," S. 1532, as it passed the Senate, January 14th, 1887, was as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, and from the same original point of departure or to the same point of arrival; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *provided, however*, that upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time make general rules exempting such designated common carrier in such special cases from the operation of this section of this Act; and when such exceptions shall have been made and published they shall, until changed by the Commission or by law, have like force and effect as though the same had been specified in this section."

It will be noticed that the words, "*under substantially similar circumstances and conditions*," were then introduced into the 4th section, for the first time.

Judge Cooley states that on May the 12th, 1886, a motion was made by Senator Camden to change the phraseology of the first part of the section, so that it should read, "of like kind of property under *substantially similar circumstances and conditions*."

1 I. C. C. Rep., p. 78, in re. L. & N. R. R. Co.

Senator Camden's motion on May 12, 1886, was to insert the words "for the transportation of passengers, or of the like kind of property subject to the provisions of this Act."

Senator Allison said that it seemed to him that the true amendment "would be, to put in a substantial reference to the second section of the bill;" and that it would be better to insert "that it shall be unlawful to charge or receive any greater compensa-

tion in the aggregate for the transportation of passengers or property, *as provided by the second section of this Act,* which clearly indicates the *conditions and circumstances*, etc., which will regulate the different classes."

Senator Harris announced that the Senator from West Virginia (Mr. Camden) was ready "to ask the unanimous consent of the Senate to withdraw the amendment he had heretofore offered, and to offer this, which is satisfactory to the Committee and also to the Senator from Rhode Island, who moved the amendment:—'of like kind of property *under substantially similar circumstances and conditions,*' adopting the language of the second section instead of the language adopted by the Senator from Rhode Island in his amendment."

It will be seen from the foregoing extracts from the proceedings of the Senate on May 12, 1886, that the words "*under substantially similar circumstances and conditions,*" as they appeared in the fourth section of the Act, when it passed the Senate, were imported into that section from the second section of the Act.

Judge Cooley refers to the fact that when the Senate Bill (S. 1532) went to the House of Representatives, with the fourth section containing the words "under substantially similar circumstances and conditions," the House Committee on Commerce proposed to substitute for it the "Reagan Bill," H. R. 6657, the fourth section of which contained an absolute and unconditional prohibition against charging more for a shorter than for a longer distance, and which section is quoted in full *ante*, Section LIII.

1 I. C. C. Rep., p. 76, *in re*. L. & N. R. R.

Judge Cooley refers to the fact that the Conference Committee of the two Houses reported the fourth section amended so as to read as it now stands; and he adds that:

"The work of the Conference Committee was very elaborately and carefully performed. The two bills which were referred to it presented very clearly the views which had prevailed in the two Houses respectively, on the general subject of relative charges on long and short haul traffic—the House view of an inflexible rule, forbidding absolutely the greater charge for the shorter haul, and the Senate view *that the rule should be subject to exceptions when the circumstances and conditions required it*. The Conference Committee accepted deliberately the Senate view, and presented it, in the report to the two houses. In the Senate the report, before adoption, was discussed, and what was proposed by it on this point of vital interest was very distinctly brought out and

made prominent; and in the House, where also the report was adopted, nothing which was said by any one indicated that the situation was otherwise understood.

“It is impossible to resist the conclusion that in finally rejecting the ‘long and short haul clause’ of the House Bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the 4th section as it had passed the Senate, both houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, *leaving the door open for exceptions in certain cases*, and, among others, in cases where *the circumstances and conditions of the traffic were affected* BY THE ELEMENT OF COMPETITION, and where exceptions might be a necessity if the COMPETITION was to continue. And water competition was beyond doubt especially in view.”

1 I. C. C. Rep., pp. 77, 78, *in re. L. & N. R. R.*

LV.

HISTORY OF FOURTH SECTION—CONTINUED.

As it may be argued that a carrier can in no case of competition, lawfully charge more for a shorter than for a longer distance, unless he shall have previously obtained the permission of the Commission, and as I insist that such an argument practically ignores the fact that Congress refused to pass the 4th section of the “Cullom Bill,” S. 1532, as it originally appeared, and, in lieu thereof, adopted from the 2d section of the Act the phrase “under substantially similar circumstances and conditions,” I here print, for the convenience of the Court, the 4th section of the “Cullom Bill,” S. 1532, as it originally appeared, and the

4th section of the "Act to Regulate Commerce," as it was finally passed:

4TH SECTION OF THE "CULLOM BILL,"
S. 1532, AS IT ORIGINALLY AP-
PEARED.

"That it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or property subject to the provisions of this Act for a shorter than for a longer distance over the same line, in the same direction (and from the same original point of departure). Provided, however, that upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time (make general rules covering exceptions to any such common carrier, in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier in such special cases from the operation of this section of this Act; and when such exceptions shall have been made and published they shall have like force and effect as though the same had been specified in this section."

The words in parentheses in the 4th section of the "Cullom Bill," S., 1532, as it originally appeared, were omitted from the 4th section of the Act, as it was finally passed; and the words italicised in the 4th section of the Act, as it finally passed, were not contained in the 4th section of the "Cullom Bill," S. 1532, as it originally appeared.

It will be noticed that the 4th section of the "Cullom Bill," S. 1532, as it originally appeared, contained a prohibition against making a greater charge for the shorter distance, which was, for

4TH SECTION OF THE ACT TO REGULATE
COMMERCE, AS IT WAS FINALLY
PASSED.

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance. Provided, however, That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act."

all practical purposes, as absolute and unconditional as the prohibition contained in the "Reagan Bill," H. R. 6657; and that under the 4th section of the "Cullom Bill," S. 1532, as it originally appeared, the carrier could, in no case, lawfully charge more for a shorter than for a longer distance, unless he had first obtained permission from the Commission to make the greater charge.

But when the 4th section of the Act, as finally passed, so restricted the prohibition, that it did not apply in any case *where the transportation was not conducted "under substantially similar circumstances and conditions,"* there was no longer any necessity for the carrier to apply to the Commission, where the circumstances and conditions were substantially *dissimilar*.

Any other construction fails to give any effect whatever to the important phrase, "under substantially similar circumstances and conditions," and leaves the 4th section of the Act as if those words had never been used.

To make my contention somewhat more manifest, I print in parallel columns the material prohibitory words of the 4th section of the Act, as finally passed, omitting from the left column the phrase, "under substantially similar circumstances and conditions:"

WITHOUT THE PHRASE.

"It shall be unlawful . . . to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property

for a shorter than for a longer distance."

WITH THE PHRASE.

"It shall be unlawful . . . to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property *under substantially similar circumstances and conditions* for a shorter than for a longer distance," etc.

In re. L. & N. R. R. Co., 1 I. C. C. Rep., p. 57, Judge Cooley, in speaking of the effect of the introduction into the 4th section of the phrase, "under substantially similar circumstances and conditions," said:

"That which the Act does not declare unlawful must remain lawful if it was so before, and that which it fails to forbid, the carrier is left at liberty to do, without permission of anyone."

"The charging or receiving the greater compensation for

the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar circumstances and conditions; and, therefore, if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its so doing will not alone convict it of illegality, *since if the circumstances and conditions of the two hauls are dissimilar, the statute is not violated.*"

This language of Judge Cooley was quoted approvingly by Judge Ross, in the case of *I. C. C. vs. A. T. & S. F. R. R. Co.*, 50 Fed. Rep., pp. 300, 301. See also 56 Fed. Rep., p. 942., *I. C. C. vs. C., N. O. & T. P. Ry. Co.*; 69 Fed. Rep., pp. 230, 232, 233, *I. C. C. vs. Ala. Midland Ry. Co.*; 71 Fed. Rep., p. 839, *Behlmer vs. L. & N. R. R. Co.*

It is said by the Sixth Circuit Court of Appeals, that though the 4th section authorizes the carrier to apply to the Commission for leave to charge a less rate for a longer haul, "it does not prohibit a railroad company from charging a less rate for a longer haul, if it can justify that rate, *by showing that the circumstances and conditions are dissimilar*; whenever it is challenged before the Commission or in the courts." 74 Fed. Rep., p. 818, 819, *D. G. H. & M. Ry. Co. vs. I. C. C.*

LVI.

THE PHRASE, "UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES AND CONDITIONS," AS USED IN THE SECOND SECTION.

The second section provides:

"That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

24 U. S. Stat. at Large, pp. 379, 380.

It will be noticed that the Act to Regulate Commerce contains no provision for an application to the Commission for relief against the *second* section.

Judge Cooley, after quoting the second section, said:

"Here it will be observed that the phrase is precisely the same (as in the fourth section), and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section, as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect of the very subject-matter with which section 4, where it is employed, has to do, namely, the charges for transportation service. It is not at all likely that Congress would deliberately, in the same Act, and when dealing with the same subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it, would be essentially different from what it was as used in another. But beyond question the carrier must judge for itself what are the 'substantially similar circumstances and conditions' which preclude the special rate, rebate, or drawback, which is made unlawful by the second section, since no tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law. The carrier judges on peril of the consequences; but the special rate, rebate or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this, it must also, when using the same words in the fourth section, have intended that the carrier whose privilege was in the same way limited by them, should in the same way act upon its judgment of the limiting circumstances and conditions."

1 I. C. C. Rep., pp. 59, 60, in re. L. & N. R. R. Co.

LVII.

THE MEANING OF THE WORDS, "SIMILAR CIRCUMSTANCES AND CONDITIONS," AS USED IN THE SECOND AND FOURTH SECTIONS.

This Court, in construing the second and third sections, said :

" In this connection we quote with approval from the opinion of Judge Jackson in the Court below : ' To come within the inhibition of said section, the differences must be made *under like conditions* ; that is, there must be contemporaneous service in the transportation of like kinds of traffic *under substantially the same circumstances and conditions*. In respect to passenger traffic, the positions of the respective persons, or classes, between whom differences in charges are made, must be compared with each other, and there must be found to exist substantial identity of SITUATION and of service, accompanied by irregularity and partiality, resulting in undue advantage to one, or undue disadvantage to the other, in order to constitute unjust discrimination.' "

145 U. S., p. 282, I. C. C. vs. B. & O. R. R.

In the same case at Circuit :

Judge Jackson said, that the English cases " establish the rule that in passing upon the question of undue or unreasonable preference, or disadvantage, it is not only legitimate, but proper, to take into consideration, besides the mere differences in charges, various elements, such as *the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the relative cost of the service and profit to the company, and the SITUATION and circumstances of the respective customers with reference to each other as COMPETITIVE or otherwise.*"

43 Fed. Rep., pp. 53, 54, I. C. C. vs. B. & O. R. R. Co.

The paragraph last quoted from Judge Jackson's opinion was quoted by this Court in T. & P. Ry. vs. I. C. C., 162 U. S., p. 232.

If, as said by this Court in construing the second and third sections, the circumstances and conditions include those of "SITUATION" as well as of service; and if, as said by Judge Jackson, the situation and circumstances include those which are "*competitive,*" as well as those which are not; then, as said by Judge Cooley :

" It is not at all likely that Congress would deliberately,

in the same Act, and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it, would be essentially different from what it was as used in another.

1 I. C. C. Rep., 59; *in re*. L. & N. R. R. Co.

LVIII.

COMPETITION IS ONE OF THE CIRCUMSTANCES OR CONDITIONS CONTEMPLATED BY THE FOURTH SECTION.

In the case of *ex parte Koehler*, decided July 4, 1887, 31 Fed. Rep., 319, Deady, Judge, said: "Freight carried to or from a competitive point, is always carried under substantially dissimilar circumstances and conditions from that carried to or from non-competitive points. In the latter case, the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than for a short one. When each haul is made from, or to, a non-competitive point, the effect of such discrimination is to build up one place, at the expense of the other. Such action is wilfully unjust, and has no justification or excuse in the exigencies or conditions of the business of the corporation. In the former case the circumstances are altogether different. The power of the corporation to make a rate, is limited by the necessities of the situation. *Competition controls the charge. It must take what it can get, or abandon the field, and let its road go to rust.*"

"*Competition* may not be the only circumstance that makes the condition under which a long and short haul are performed substantially dissimilar; *but certainly it is the most obvious and effective one*, and must have been in the contemplation of Congress, in the passage of the Act." . . .

"The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will, and must, send and receive freight at lower rates than others not so favored. This is the result of natural advantage, supplemented often by exceptional sagacity and enterprise, and it

would be folly in the Legislature to prevent it, if it could. As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give each one an even chance, and a fair show, to make the most of his, or its opportunities, and leave the result to circumstances over which it has little, if any, control." p. 321.

Again, he said: "Congress must have contemplated that there might be such a difference in the circumstances attending a long and short haul as would justify such a charge,—as would make it necessary for a railway corporation, in the retention and acquisition of the business for which it is constructed and operated, to charge less for a long haul than a short one. Congress never intended to make of this Act a Procrustean bed, in which the conduct of the business of all the roads engaged in interstate commerce shall be made to conform to one arbitrary rule, without reference to the probable and even unavoidable difference in the conditions and circumstances under which it must be transacted." pp. 320, 321.

In the case of *M. P. Ry. Co.*, decided June 21, 1887, 31 Fed. Rep., 862, Judge Pardee said: "That *competition*, the life of trade, cuts an important figure in the conditions and circumstances attendant upon transportation of property and passengers, cannot well be overlooked nor denied. Nor can it well be denied that, as between the short and long haul, competition may exist to that extent that what would otherwise be similar circumstances and conditions will be dissimilar circumstances and conditions.

In the case of *ex parte Koehler*, decided May 4, 1885, 23, Fed. Rep., p. 533, Judge Deady, in speaking of the discrimination which necessarily exists whenever a greater charge is made for a shorter than for a longer distance, said:

"It is not the fault or contrivance of the railway that compels this discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up, or the other down, but only to maintain its business against rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It

must either compete with the boats during the season of water transportation, and carry freight below what the Legislature declared to be a reasonable rate, or abandon the field and let its road go to rust. Nor can the shipper at the non-competing point, or over the short haul, complain, so long as his goods are carried at a reasonable rate. It is not the fault of the railway that the shipper, who does business at a competing point, has the advantage of it. It is a natural advantage which he (the local shipper) must submit to, unless the Legislature will undertake to equalize the matter, by prohibiting the carriage of goods by water for a less rate than by rail."

In *ex parte* Koehler, 25 Fed. Rep., p. 75, Judge Deady said: "While the State had the power to prevent a railway from discriminating between persons and places, for the sake of putting one up, and another down, or for any reason other than the real exigencies of its business, it could not prevent discrimination between places, *when it is the result of competition* with other lines or means of transportation, and practically thereby deprive a railway company of the right to do business, and render its property comparatively valueless."

It may be said that the three cases decided by Judge Deady were heard *ex parte*, and, probably, without argument; but the fact that Judge Deady, through his Receiver, had the management and operation of the Oregon and California Railway for several years, gives to his opinions a peculiar value, born of practical experience, in a field severely competitive, and entitles them to far more weight than if they had been the result of mere theoretical arguments.

In *I. C. C. vs. A. T. & S. F. R. R. Co.*, 50 Fed. Rep., p. 306, Judge Ross said: "Wherever and whenever actual *competition* exists, the question the carrier has to deal with is not so much what is a fair rate for the service, or what the traffic will bear, but what rate can be got for the service as against the rate offered by the competitor."

In *I. C. C. vs. C., N. O. & T. P. Ry. Co.*, 56 Fed. Rep., p. 943, Judge Newman, in considering the phrase, "under substantially similar circumstances and conditions," said "that *competition*,

generally speaking, must be considered in applying this phrase in any given case."

In this case at Circuit, 69 Fed. Rep., p. 231, Judge Bruce said: "Neither the Congress, in making the law, nor the courts, in construing the law, can fail to note the element of *competition* as it enters into the industrial life of the people; and perhaps in no department is it more important and controlling than in the carrying trade of the country. It could not have been the purpose of Congress to ignore, or even to regard with disfavor, the competing forces and interests, which, in many cases, result in so much benefit to so many classes of the people."

In *Behlmer vs. L. & R. R. Co.*, 71 Fed. Rep., 840, Judge Simonton uses this language: "When, then, may the circumstances and conditions of the two hauls be said to be dissimilar? Judge Cooley, in the same case, answers this question:

'Among other things, in cases where the circumstances and conditions of the traffic were affected by the element of *competition* and where exceptions might be a necessity if the *competition* were to continue. And water *competition* was, beyond doubt, especially in view.'

In *I. C. C. vs. L. & N. R. Co.*, 73 Fed. Rep., p. 419, Judge Clark, holding the U. S. Circuit Court for the Middle District of Tennessee, said:

"It may therefore be accepted as the result of the cases in this country that the circumstance of *competition* is an element which must be considered, and the English cases are now full and clear upon the subject."

Again, he said (73 Fed. Rep., p. 424): "It thus appears beyond question, without further reference to the authorities, that, in every case where a difference in the rates between two points of shipments is the ground of complaint, a leading and important element in the determination of the question is that of *competition*, or want of competition."

In *D. G. H. & M. Ry. Co. vs. I. C. C.*, 74 Fed. Rep., p. 835, Judge Hammond, speaking for the Sixth Circuit Court of Ap-

peals, used this language: "And there is not any doubt that whatever may have been thought heretofore on the point in England, now, the *competition* of rival lines is one of the circumstances that must be considered; not as controlling, but as an element along with others to justify the discrimination of which complaint is made."

In *T. & P. Ry. Co. vs. I. C. C.*, 162 U. S., pp. 233, 234, known as the "Import" case, Mr. Justice Shiras, speaking for this Court, said: "That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of *traffic originating within the limits of the United States*, *competition* that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered."

In the case of *Foot vs. Utica & B. R. R.*, N. Y. Railway Commission, Rep. 1884, Vol. 1, p. 104, cited in 21 Am. & Eng. R. R. Cases, p. 63, the New York Railroad Commission used this language:

"If the price for carrying a certain distance is not unreasonable, and yet for a greater distance, for some reason, the same price cannot be obtained, should therefore the road give up the second price entirely? Is not half a loaf better than no bread? If such a result is *forced* upon a road, those at intermediate stations would surely, in some way, be obliged to make up the sum lost, and be worse off than before." . . . "Railroads, like other corporations or individuals, must sell what they have to sell, viz., transportation, for the best price they can get, provided it is not unreasonable in the sense of extortionate or prohibitive of the articles transported." . . . "Examples can be multiplied, but this single one shows that the cost of service is not alone to control, but that nature of the article, quantity of shipments, *conditions of competition*, season of year, value of service rendered, and many other elements must be considered."

During the fiscal year ending June 30, 1893, the revenue de-

rived by the Alabama Midland Ry. from non-competitive traffic amounted to \$174,588.43; and the revenue derived from competitive traffic amounted to \$152,862.33.

McLendon, Trans., p. 352.

If that railway, as a result of the decision in this case, shall be forced to abandon its competitive traffic, the local stations between Bainbridge and Troy will "surely, in some way, be obliged to make up the sum lost," or that railway will be compelled to carry its local traffic at less than reasonable rates.

LIX.

WATER COMPETITION.

The Commission, in all of its decisions, has conceded that *water* competition, or competition with *foreign* railroads, or competition with lines of railroad *wholly in a single State*, may make out the dissimilarity of circumstances and conditions in reference to the transportation of traffic, which will authorize a railroad company, without applying to the Commission, to charge less for the longer than for the shorter distance. (1 I. C. C. Rep., p. 3., in re. Louisville & Nashville R. R. Co.; 5 I. C. C. Rep., p. 607, Gerke Brewing Co. vs. L. & N. R. R. Co. et al.; 5 I. C. C. Rep., p. 387, Ga. R. R. Comm. vs. Clyde Steamship Co.)



Suppose A, B, C, to be an equilateral triangle; that each of the sides is 100 miles long; and that the line A B, B C, represents a railroad.

Now if the line A C be supposed to represent a navigable water course, the Commission concedes that the railroad A B, B C, may compete with the vessels upon the water course, without applying to the Commission, and without necessarily reducing its local rates; but if the line A C be supposed to be a rival railroad, which is not a foreign road, nor a road wholly within a

single State, then, if the road A B, B C, desires to compete with the road A C, it must, according to the Commission, reduce all of its local rates to the competitive rate prevailing between A and C, or it must apply to the Commission for relief from the 4th section.

What good reason can possibly exist for such a distinction between water and rail competition? And what a good reason can possibly exist for the distinction between different kinds of railroads?

Water transportation is generally cheaper than railroad transportation, and therefore water competition generally forces lower competitive rates.

This, however, is a mere difference in degree; and is unimportant.

The important fact is, that a competitive rate must be met, whether it be made by water craft, or by railroad. It is the fact of competition, and not the kind of competition, that creates the substantial dissimilarity in the circumstances and conditions of transportation.

56 Fed. Rep., 944, I. C. C. vs. C., N. O. & T. P. Ry. Co.

One reason suggested for making the distinction between water and rail competition, is said to be that water competition is exempted from the operation of the Act to Regulate Commerce. But there is no *practical* force in the suggestion.

If we suppose the line A C, in the triangle referred to above, to represent a railroad 100 miles long, and the line A B, B C, to represent another railroad 200 miles long, and that both railroads are competing for traffic between A and C; the long line will be practically at the mercy of the short line, if the long line be compelled to reduce its local rates as a condition of its being allowed to meet the competitive rates of its rival. Because, even though the short line be also forced to reduce *its* local rates down to the level of the competitive rate, the loss sustained by it, in doing so, will be only one-half as great as the loss which it will inflict upon the long line, by forcing the latter to reduce its local rates. The illustration, of course, assumes that the volume of the local traffic of each line is in proportion to its mileage, and that the long line, if allowed to compete, can secure one-half of the competitive traffic.

In such a case, the long line is as completely at the mercy of the short line, as if the short line was not at all subject to the Act to Regulate Commerce.

If the Commission had the power to compel the short line A C to charge reasonably *high* competitive rates, so as to enable both lines to realize full compensation from their competitive traffic, there might have been some reason for drawing a distinction between water and rail competition.

It is possible that when the distinction was first made by the Commission, the Commission may have supposed that it had the power to compel railway companies to maintain reasonably *high* rates at competitive points.

But the Commission afterwards held that the word "reasonable," as used in the first section in reference to rates, means reasonably *low*, but *not* reasonably *high*. The Commission has also held that it has no power to order competitive rates to be advanced, even where they are so low "that persistence in making them would be ruinous."

2 I. C. C. Rep., p. 231; in re. C., St. P. & K. C. R. R.

If it be the law that one railroad subject to the Act cannot compete with another railroad subject to the Act, without reducing its local rates, and if the Commission has no power to compel a railroad to charge reasonably *high* competitive rates, then the long line is as completely at the mercy of the short line as if the short line were a navigable water-course; and the short lines of railway will eventually secure a complete monopoly of all the competitive traffic of this country.

If it be the law that nothing but water competition can be recognized, the cities located upon the navigable water-courses will absorb the commerce of the country; and the great interior railroad centers, such as Indianapolis, Birmingham, Atlanta, etc., must relapse into the condition of mere villages.

It is impossible to assume that Congress intended that such a construction should be placed upon the long and short haul clause, as would give the monopoly of transportation to the short lines of railroads; and the monopoly of commerce to the cities located upon water-courses.

In the case of the I. C. C. vs. B. & O. R. R. Co., this Court

said that the Act was NOT *designed* "to prevent competition BETWEEN DIFFERENT ROADS;" thus ignoring the distinction which the Commission has attempted to draw between competition by water, and competition by railroad. 145 U. S., pp. 276, 281.

It is competition that "affects rates" that is to be considered. 162 U. S., 233, T. & P. Ry. vs. I. C. C.

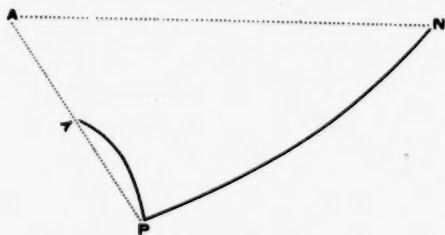
And rail competition "affects rates" as much as water competition.

LX.

PECULIAR (?) CASES OF RAILROAD COMPETITION.

In re. Louisville & Nashville R. R. Co., 1 I. C. C. Rep., p. 32, the Commission said, that even as between railroads which are subject to the Act, there might be *rare and peculiar* cases of competition, which would create the dissimilarity of circumstances and conditions entitling the carrier to charge less for the longer than the shorter haul.

One such case is referred to on page 81, and is sufficiently illustrated by the following diagram:



The Pennsylvania Railroad has a line running from Youngstown (Y), via Pittsburgh (P), to New York (N), which line is 510 miles long. It is represented by the solid line in the diagram.

A competing railroad route (represented by the dotted line), runs from Pittsburgh, via Youngstown, to Ashtabula (A), and thence to New York, which line is 682 miles long. This line gives to the people of Pittsburgh and Youngstown competition with the Pennsylvania Railroad, in their business to and from New York and New England.

The Commission intimated that the competing line ought to be allowed to charge less from Pittsburgh than from Youngstown to New York, because the application of any other rule "must be fatal to competition." p. 82.

The only "*peculiarity* of the competition" in that case is "that the business on the roads respectively is started in opposite directions when destined to New York; so that on east-bound traffic from Pittsburgh, the haul by one road is shorter than from Youngstown, and longer by the other."

While it may be called a "peculiarity," in one sense, it furnishes no substantial reason for distinguishing that case from the ordinary case where a long line is seeking to compete with a shorter line.

The competing line, in that case, was 172 miles longer from Pittsburgh to New York than the Pennsylvania Railroad, and the competing line was asking to be allowed to compete at Pittsburgh, without being compelled to reduce its local rates from Youngstown. That was all there was in the case.

A similar necessity exists in every case where a long line is competing with a shorter line.

The only fact of any legal consequence, in any such case, is, that if long lines are not allowed to compete with short ones, except upon the condition of reducing their local revenue, the long lines cannot, and will not compete; and it is this fact that creates the substantial dissimilarity in circumstances and conditions, which takes a case out of the operation of the fourth section.

The Commission has recently overruled so much of the decision in re. Louisville & Nashville R. R. Co., as held that carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute." But the principles laid down in that case in regard to *water* competition, competition with a *foreign road*, and competition with a *road wholly within a single State*, are reaffirmed.

5 I. C. C. Rep., 328, 387, Ga. R. R. Comm. vs. Clyde Steamship Co.

5 I. C. C. Rep., 607, Gerke Brew. Co. vs. L. & N. R. R.

Counsel for the appellant may disagree with the Commission even as to *water competition*, competition with a *foreign road*, and competition with a *road wholly within a single State*.

Counsel for the Appellant may take the broad ground, that no kind of competition, whether it be by water, or by rail, can differentiate the circumstances and conditions of transportation. His contention may be that the fourth section was intended to be a provision against any charge of a greater sum for a shorter distance, under circumstances that relate to the act of *carriage alone*; together with the relieving clause, which may be applied in the discretion of the Commission alone, on due application therefor.

The decision of the Commission in re. L. & N. R. R., holding that *water competition*, competition with a *foreign road*, competition with a *road wholly within a single State*, and "rare and peculiar cases of competition between railroads subject to the statute," may constitute a dissimilarity of circumstances and conditions, was rendered June 15, 1887 (1 I. C. C. Rep., 31); and it was adhered to by the Commission until about a month before the litigation in this case began, when the Commission, on June 11, 1892, overruled only so much of it as referred to "rare and peculiar cases of competition between railroads subject to the statute." 5 I. C. C. Rep., 327.

I submit that it is now quite too late for counsel to undertake to repudiate a principle which had been recognized for so long a time.

The Commission was right in its first decisions, as far as they went. Its only error was in not going far enough. It erred in attempting the impossible task of drawing a sound distinction between the different kinds of competition, as affecting rates.

LXI.

RATES FROM NEW YORK TO MONTGOMERY ARE AFFECTED BY
WATER COMPETITION.

In Section X, I have shown that the Alabama River is navigable every month in the year by steamboats between Montgomery and Mobile. In Section XI, I have shown the number of steamboats which now navigate that river, and their tonnage. I have also shown that in the event rail-rates should be advanced from New York to Montgomery, all boats necessary to do the bulk of the business done at Montgomery could be obtained. I have shown in Section XII, that the effect of the navigability of that river is to keep down the rates charged by the railroad to so low a point that water transportation, which is the cheapest mode of transportation known, cannot successfully meet the present rail-rate. I have shown in Section XIII, that in former years traffic moved by ocean from New York to Mobile and thence by river to Montgomery in large quantities; and that it continued to move until the rail-rates were reduced so low that they could not be met by the water transportation lines. I have shown in Section XVI., that if the rates on class goods from New York to Montgomery were increased so as to be the same as the rates from New York to Troy, the traffic would return from the rail-lines, back to the water-lines.

I have shown that there are two water routes from New York to Montgomery; one of which is by ocean to Mobile, and thence by river to Montgomery; and the other by ocean to Savannah; thence by rail to Mobile, and thence by river to Montgomery.

T. H. Moore, Trans., p. 220.

But, while I have shown that the rates from New York to Montgomery are affected by water competition, I do not rely upon that fact alone. On the contrary, I insist that the rail competition between New York and Montgomery is entitled to as much consideration as the water competition.

LXII.

COMPETITION OF CONTROLLING FORCE.

The Commission, in its report and opinion in this case, says that even water competition cannot be considered, unless it be actual and of controlling force in respect to traffic important in amount.

Trans., p. 57.

In the case of Raworth vs. N. P. R. R. Co., 5 I. C. C., Rep., 246, Commissioner Veasey, speaking for the Commission, said: "Competition has a potential existence in the sense in which we wish to be here understood, where the means of such competition exists, and all the conditions are such that it is morally certain an advance of rates by a carrier will result in developing competition of controlling force. If the facts make out a clear case of this kind, it would seem unreasonable to require the carrier to go further and demonstrate by an actual advance in rates, resulting in a loss for the time being of the traffic involved that such advance will so result."

The facts in this case show that a sufficient amount of tonnage could easily be obtained to carry the entire competitive traffic between New York and Montgomery.

LXIII.

THE ORDER OF THE COMMISSION IN REFERENCE TO RATES ON
PHOSPHATE ROCK FROM SOUTH CAROLINA AND
FLORIDA FIELDS TO MONTGOMERY.

The Commission ordered the defendants to charge "on shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid."

Trans., p. 69.

The Alabama Midland Railway and its connections not only participate in the carriage of class goods from New York and other Northeastern cities, to Montgomery; but they also participate in the carriage of phosphate rock from Charleston, and Port Royal, S. C., and from Gainesville, Fla., to Montgomery.

With reference to shipments of phosphate rock from the South Carolina and Florida fields to Troy, and through Troy to Montgomery, the Commission finds as a fact, and so reports, that the following constitute through lines, viz.:

Line No. 1, from Charleston to Montgomery: The Charleston & Savannah Ry., the Savannah, Florida & Western Ry., and the Alabama Midland Ry.

Trans., p. 55, right col.

Line No. 2, from Port Royal to Montgomery: The Port Royal & Augusta R. R. (Cen. R. R. of Ga.), the Charleston & Savannah Ry., the S. F. & W. Ry., and the Alabama Midland Ry.

Trans., p. 55, right col.

Line No. 3, from Gainesville to Montgomery: The S. F. & W. Ry., and the Alabama Midland Ry.

Trans., p. 55, right col.

Line No. 4, from Port Royal to Montgomery: The Ga. Cent. R. R.

Trans., p. 55, right col.

Line No. 5, from Charleston to Montgomery: The Charleston & Savannah Ry., and the Ga. Cent. R. R.

Trans., p. 55, right col.

Line No. 6, from Charleston to Montgomery: The South Car. R. R., the Ga. R. R., and the Ga. Cent. R. R.

Trans., p. 55, right col.

Line No. 7, from Gainesville to Montgomery: The S. F. & W. Ry., and the Ga. Cent. R. R.

Trans., p. 55, right col., and p. 56, left col.

Line No. 8, from Montgomery to Savannah: The Ga. Cent. R. R.

Trans., p. 56, left col.

Line No. 9, various lines from Charleston, Port Royal, Savannah and Gainesville to Atlanta, and thence via the Atlanta & West Point R. R., and the Western Ry. of Ala., to Montgomery.

Line No. 9, though not specifically mentioned by the Commission, is obvious from the map. Said lines are illustrated in Diagram No. 2, referred to in Section XXXI.

Of the nine rail lines, mentioned above in this section as running from the phosphate fields to Montgomery, the following

lines do not pass through Troy at all, viz.: Nos. 4, 5, 6, 7, 8 and 9; though all of them extend to Montgomery.

To say nothing of the potential competition by water from Charleston and Port Royal to Montgomery, I submit, upon the foregoing facts, that the rail competition at Montgomery is so dissimilar from the rail competition at Troy, with reference to the shipment of phosphate, as to fully justify the difference in the rates charged.

I submit, further, upon the foregoing facts, that competition at Montgomery, with reference to phosphate shipments, is such as "*affects rates*," *i. e.*, that the low rate charged from the phosphate fields to Montgomery by the Alabama Midland Railway and its connections is necessary to secure freight "*which would otherwise go by other competitive routes*."

The question of *fact* as to whether the competition referred to is such as to "*affect rates*" has been settled by the decree of the Circuit Court, and the decree of the Circuit Court of Appeals; and this Court will not reverse on that question of fact, "unless it finds something in the record to make it its duty to draw a different conclusion."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

The question of *law* as to whether competition that "*affects rates*" can be considered, has been settled by this Court in T. & P. Ry. Co. vs. I. C. C., known as the Import case.

162 U. S., 233, 234.

LXIV.

THE ORDER OF THE COMMISSION IN REFERENCE TO RATES ON COTTON FROM MONTGOMERY FOR EXPORT THROUGH THE ATLANTIC SEAPORTS — BRUNSWICK, SAVANNAH, CHARLESTON, WEST POINT, AND NORFOLK.

The Commission ordered the defendants to charge "on shipments of cotton from Troy aforesaid, for export, through the Atlantic seaports, to wit: Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid."

Trans., p. 69.

With reference to shipments of cotton from Montgomery to the ports of Brunswick, Savannah, Charleston, West Point, and Norfolk, the Commission finds as a fact, and so reports, that the following constitute through routes or lines, viz.:

Line No. 1, from Montgomery to Brunswick: The Alabam Midland Ry., the Savannah, Florida & Western Ry., and the Brunswick & Western Ry.

Trans., p. 56, left col.

Line No. 2, from Montgomery to Savannah: The Alabama Midland Ry., and the Savannah, Florida & Western Ry.

Trans., p. 56, left col.

Line No. 3, from Montgomery to Charleston: The Alabama Midland Ry., the Savannah, Florida & Western Ry., and the Charleston & Savannah Ry.

Trans., p. 56, left col.

Line No. 4, from Montgomery to West Point, Va.: The Western Railway of Alabam, the Atlanta & West Point R. R., and the Richmond & Danville R. R.

Trans., p. 56, left col.

Line No. 5, from Montgomery to West Point, Va.: The Alabama Midland Ry., the Savannah, Florida & Western Ry., the Charleston & Savannah Ry., the Northeastern Railroad of South Carolina, the Wilmington, Columbia & Augusta R. R., the Wilmington & Weldon R. R., the Petersburg R. R., the Rich. & Petersburg R. R., and the Richmond & Danville R. R.

Trans., p. 56, left col.

Line No. 6, from Montgomery to Norfolk: The Alabama Midland R. R., the Savannah, Florida & Western Ry., the Charleston & Savannah Ry., the Northeastern Railroad of South Carolina, the Wilmington & Weldon R. R., and the Seaboard & Roanoke R. R.

Trans., p. 56, left col.

Line No. 7, from Montgomery to Brunswick: The Georgia Central R. R., and the East Tennessee, Virginia & Georgia Ry.

Trans., p. 56, left col.

Line No. 8, from Montgomery to Savannah: The Georgia Central R. R.

Trans., p. 56, left col.

Line No. 9, from Montgomery to Charleston: The Georgia Central R. R., and the Charleston & Savannah R. R.

Trans., p. 56, left col.

Line No. 10, from Montgomery to Charleston: The Georgia Central Railroad, the Georgia Railroad, and the South Carolina Railroad.

Trans., p. 56, left col.

Line No. 11, from Montgomery to West Point, Va.: The Georgia Central Railroad, and the Richmond & Danville Railroad.

Trans., p. 56, left col.

Line No. 12, from Montgomery to West Point, Va.: The Georgia Central Railroad, the Atlantic Coast Line, and the Richmond & Danville Railroad.

Trans., p. 56, left col.

Line No. 13, from Montgomery to Norfolk: The Georgia Central Railroad, and the Atlantic Coast Line.

Trans., p. 56, left col.

Line No. 14, from Montgomery to Norfolk: The Georgia Central Railroad and the Seaboard Air Line.

Trans., p. 56, left col.

Line No. 15, from Montgomery via the Alabama River to Mobile, thence by ocean to Brunswick, Savannah, Charleston, West Point, Va., and Norfolk. This line, while not mentioned by the Commission, is shown by the proof taken in the Circuit Court to be one of the most important factors in the problem.

Said lines are illustrated in diagram No. 2, referred to in Section XXX.

Of the fourteen rail lines, or rail and water lines mentioned above in this section, the following lines do not pass through Troy at all, viz.: Numbers 4, 7, 8, 9, 10, 11, 12, 13 and 14; though all of them extend from Montgomery to the Atlantic seacoast. And in addition to said rail lines, and rail and water lines, Montgomery has the all water line from Montgomery to Mobile by river, and thence by ocean direct to European ports, while Troy is fifty-two miles distant from the river.

I submit, upon the foregoing facts, that the competition at Montgomery is so dissimilar from the competition at Troy, with reference to cotton shipped to the Atlantic seacoast for export, as to fully justify the difference in the rates charged.

I submit, further, upon the foregoing facts, that competition at Montgomery, with reference to cotton shipped from Montgomery to the Atlantic seacoast for export, is such as "*affects rates*," i. e., that the low rates charged from Montgomery to the Atlantic seacoast by the Alabama Midland Railway are necessary to secure freight "*which would otherwise go by other competitive routes*."

The truth is, as made manifest by the testimony, that the river line from Montgomery to Mobile, and the ocean lines from Mobile to European ports, fix the maximum rates which can be charged by the rail lines from Montgomery to the Atlantic seacoast in connection with vessels sailing from the Atlantic seacoast for European ports; and if the rail lines should attempt to raise the rates from Montgomery to the Atlantic seacoast as high as the rates from Troy to the Atlantic seacoast, the cotton would all go from Montgomery by river to Mobile, and thence by ocean direct to Europe.

The result is, that unless the Alabama Midland Railway accepts the rates which it now charges from Montgomery to the Atlantic seacoast, the cotton intended for export will either go by the river and ocean direct to Europe, or it will go by some of the other rail lines, or rail and water lines from Montgomery to the Atlantic seacoast, and thence to Europe.

It must be apparent that the traffic manager of the Alabama Midland Railway (which is not making operating expenses) would not carry cotton from Montgomery through Troy, for less than he charges from Troy to the Atlantic seacoast, unless he was satisfied that the freight "*would otherwise go by other competitive routes*."

The question of *fact* as to whether the competition referred to is such as to "*affect rates*," has been settled by the decree of the Circuit Court, and the decree of the Circuit Court of Appeals; and this Court will not reverse on that question of fact, "unless it finds something in the record to make it its duty to draw a different conclusion."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

The question of *law* as to whether competition that "*affects rates*" can be considered, has been settled by this Court in T. & P. Ry. Co. vs. I. C. C., known as the Import case, 162 U. S., 233, 234.

LXV.

THE ORDER OF THE COMMISSION IN REFERENCE TO RATES ON
CLASS GOODS FROM LOUISVILLE, ST. LOUIS, AND
CINCINNATI, TO TROY.

The Commission ordered the defendants to charge "on class goods shipped from Louisville, Ky.; St. Louis, Mo., or Cincinnati, Ohio, to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Ga., and Eufaula, Ala."

Trans., p. 69.

Columbus, Ga., and Eufaula, Ala., are situated on the Chattahoochee River, which is navigable by steamboats from Columbus to the Gulf at Apalachicola, Fla.

The distance between Columbus and Eufaula, by river, is only about 100 miles; and as steamboats are constantly plying between Columbus and Eufaula, the rates from Louisville, St. Louis, and Cincinnati, to Eufaula, are necessarily the same as to Columbus. Troy is about 90 miles distant from the Chattahoochee River; and about 52 miles distant from the Alabama River at Montgomery. It has no water transportation.

If the object of the Commission was merely to equalize the rates to Troy, as compared with the rates to Columbus and Eufaula, it can be done either by decreasing the rates to Troy, or by increasing the rates to Columbus and Eufaula, so as to make them the same as the rates to Troy.

But the testimony tends to prove that if the rates from Louisville, St. Louis, and Cincinnati, to Columbus and Eufaula, be increased so as to make them as high as the rates to Troy, the traffic will be diverted from the rail lines to the Ohio and Mississippi Rivers, and that it will be carried by steamboats to New Orleans, thence by Gulf to Apalachicola, Fla., and thence by river to Eufaula and Columbus.

There are also various rail lines running from the Chattahoochee River to the Atlantic Ocean at Jacksonville, Fernandino, Brunswick, Savannah, and Charleston. Those rail lines connect with steamships, and sailing vessels for New York and other Northeastern cities.

Class goods are shipped from New York and other Northeastern cities, as well as from Louisville, St. Louis, and Cincinnati; and the rail lines reaching from Louisville, St. Louis, and Cincinnati to Columbus and Eufaula, meet very strong competition in the carriage of class goods, from the lines carrying class goods from New York and other Northeastern cities to Columbus and Eufaula.

The usual route for the transportation of class goods from New York and other Northeastern cities is by steamships to Savannah, or other south Atlantic ports, thence by rail, to Columbus and Eufaula, or by rail to some other crossing of the Chattahoochee River, and thence by steamboats to Eufaula and Columbus.

I submit upon the foregoing facts, that the competition at Columbus and Eufaula is so dissimilar from the competition at Troy as to fully justify the difference in the rates charged on class goods from Louisville, St. Louis, and Cincinnati.

I submit further, upon the foregoing facts, that competition at Columbus and Eufaula with reference to class goods, whether shipped from the East or from the West, is such as "*affects rates*," i. e., that the low rates charged by rail to Columbus and Eufaula are necessary "to secure freight," which "*would otherwise go by other competitive routes*."

The question of fact as to whether the competition referred to is such as "*affects rates*" has been settled by the decree of the Circuit Court, and the decree of the Circuit Court of Appeals; and this Court will not reverse "unless it finds something in the record to make it its duty to draw a different conclusion."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

The question of law as to whether competition that "*affects rates*" can be considered, has been settled by this Court in T. & P. Ry. Co. vs. I. C. C., known as the Import case, 162 U. S., pp. 233, 234.

LXVI.

THE ORDER OF THE COMMISSION IN REFERENCE TO RATES ON
COTTON FROM TROY TO NEW ORLEANS.

The Commission ordered the defendants to charge "on shipments of cotton from Troy aforesaid, through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cts. per 100 lbs."

Trans., p. 69.

The rate of 50 cts. per 100 lbs. is the rate from Columbus, Ga., to New Orleans, on cotton.

Trans., p. 60, left col.

The present rate on cotton from Troy to New Orleans, is 68 cts. per 100 lbs., or 18 cts. per 100 lbs. higher than the rate from Columbus.

Trans., p. 59, right col.

If the object of the Commission was merely to equalize the rates from Troy and Columbus, to New Orleans, it can be done either by decreasing the rates from Troy, or by increasing the rates from Columbus and Eufaula (the rates from Eufaula being practically the same as the rates from Columbus), so as to make them same as the rates from Troy.

But the testimony shows that if the rates on cotton from Columbus and Eufaula to New Orleans were increased 18 cts. per 100 lbs. so as to make them as high as the rates from Troy to New Orleans, all of the cotton from Columbus and Eufaula would be shipped by steamboat down the Chattahoochee River to Apalachicola, and thence by vessel to Mobile or New Orleans.

I submit upon the foregoing facts that the competition at Columbus and Eufaula is so dissimilar from the competition at Troy, as to fully justify the difference in the rates charged on cotton from those points to New Orleans. I submit further, upon the foregoing facts, that competition at Columbus and Eufaula with reference to cotton destined to New Orleans, is such as "*affects rates*," i. e., that the low rates charged on cotton from

Columbus and Eufaula to New Orleans by rail, are necessary to secure freight which would otherwise go by other competitive routes.

The question of *fact* as to whether the competition referred to is such as "*affects rates*," has been settled by the decree of the Circuit Court and the decree of the Circuit Court of Appeals; and this Court will not reverse "unless it finds something in the record to make it its duty to draw a different conclusion."

162 U. S., 194, C., N. O. & T. P. Ry. vs. I. C. C.

The question of law as to whether competition that "*affects rates*" can be considered, has been settled by this Court in T. & P. Ry. Co. vs. I. C. C., known as the Import case, 162 U. S., 233, 234.

LXVII.

BASING POINTS OR TRADE CENTERS.

The Commission in discussing the through rates from Louisville, St. Louis, and Cincinnati, to Troy, says: "The through rates to Troy are *based* on the Montgomery rates, and in making them Montgomery is treated as a *trade center*, or *basing point*, and Troy as a local. . . . The vice in the through rate to Troy, if any, arises from this fact, and from the consequently greater disproportionate charges for the haul from Montgomery to Troy, when compared with that from Louisville and the West to Montgomery."

"The trade center or basing point system has been in many cases pronounced unlawful by this Commission," etc.

See Trans., p. 63, left col.

"The *trade center*, or *basing point* system" of rate-making in the Southern States, which "has been pronounced unlawful" by the Commission, is thus described by Commissioner Walker: "Certain large cities and towns situated on the coast, at interior river points, and at *railroad junctions*, are *called* competitive, and *receive* quite low rates on all interstate traffic; all other stations are called local, and are charged much higher rates. The rates

to local points are made by adding to the competitive rates at the nearest competitive point the local rate from that point.

1 I. C. C. Rep., 244, *Harwell vs. C. & W. R. R.*

Judge Cooley was quoted in argument as saying that the pre-eminence of such trade centers in the Southern territory "is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them while making less concessions or none at all to less important stations."

"The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining, within certain limits, what towns shall be trade centers, and what their relative advantages."

1 I. C. C. Rep., 84, in re. *L. & N. R. R. Co.*

There may be a few mere "railroad junctions" in the South which, owing to the ignorance or corruption of certain railroad officials, have been arbitrarily "called" competitive points, and which "receive" certain arbitrary "concessions" in rates to which they are not justly entitled. There may be also a few strictly local stations in the South, which are not even "railroad junctions" where arbitrary and unfair "concessions" in rates have been made, by certain corrupt railroad officials, to enhance the value of property owned at such stations by said officials, or by their relatives or friends.

All such arbitrarily created so-called "trade centers" or "basing points," are the offspring of ignorance or corruption, and should not be recognized by the courts.

The error of the Commission is in failing to distinguish between those "trade centers," or "basing points" which have been arbitrarily created by certain railroad officials, at certain local stations, or at certain "railroad junctions," and those *natural* "trade centers" or "basing points," situated on the seacoast or on navigable rivers, and which were in existence as such "trade centers" and "basing points" long before railroads were ever dreamed of.

Montgomery is situated on the Alabama River, which is navi-

gable to the Gulf. Columbus and Eufaula are situated on the Chattahoochee River, which is also navigable to the Gulf.

All three of these were "trade centers," and "basing points," long before a mile of railroad existed on the face of the earth.

Before any railroads were built in Alabama, traffic from Cincinnati, Louisville and St. Louis was boated down the Ohio and Mississippi Rivers to New Orleans; thence by the Gulf to Mobile, and thence by the Alabama River to Montgomery; or to Apalachicola, and thence by the Chattahoochee River to Columbus and Eufaula.

They were important "trade centers" in those early days and their prominence over adjacent interior towns, such as Troy, was far greater then than now. Troy was then, as now, a local, non-competitive point.

The rates from Louisville, Cincinnati and St. Louis to Troy, were then, as now, "based" on the through rates from those cities to Montgomery, Columbus, or Eufaula, to which were added wagon rates from Montgomery, Columbus, or Eufaula, to Troy.

We see, therefore, that Montgomery, Columbus, and Eufaula are *natural* "basing points" for making rates to and from Troy; because they were the nearest points to Troy that were situated on navigable water courses.

We see also that Montgomery, Columbus, and Eufaula are *natural* "trade centers," by reason of their being situated on navigable water courses and in the midst of a large and fertile territory, which is necessarily dependent upon them for commercial facilities.

We see also that Montgomery, Columbus, and Eufaula have not been arbitrarily favored with exceptionally low rates by the ignorance or corruption of railroad officials.

We see also that railroad officials, instead of creating the advantages which Montgomery, Columbus, and Eufaula enjoy over Troy, have simply recognized these advantages as they found them in existence when the railroads first reached those points.

Of course there is a discrimination in favor of Montgomery, Columbus, and Eufaula, as compared with Troy, in the matter of rates; but the discrimination has always existed, and in no sense has it been created or increased by the railroads. On the contrary, the railroads have diminished the discrimination to the exact extent of the difference between the wagon rates which formerly prevailed and the rail rates which now prevail to and from Troy.

Such discrimination as now remains is not the fault or contrivance of the railroads, but it is the necessary result of circumstances altogether beyond their control.

See 23 Fed. Rep., 533. *Ex parte Kochler*.

LXVIII.

BASING POINTS ARE NOT CONFINED TO THE SOUTH.

Freight tariffs covering the traffic from the Eastern seaboard territory to Western points are established under the rules and regulations of the associations known as the Trunk Line and Central Traffic Associations. Under agreements of several years standing, it has been the custom of these roads, forming by connections through lines from the seaboard to the West, to determine through rates from New York to Chicago, "and to adopt such rates as the standard or basis for the construction of tariffs from other Eastern cities, and points adjacent thereto, which are directly or indirectly in competition for Western business."

"For twenty years or more the rates from Boston to Western competitive points have been the same as from New York. From Philadelphia and Baltimore the rates are "agreed differentials"—less than New York—the Baltimore rates being also lower than Philadelphia rates." * * * *

"The agreed rates and distances from New York to Chicago are taken as the standard, or 100 per cent. Through rates to the principal Western cities, towns, and junction points in the territory above described are computed at a percentage of the New York-Chicago rates, based generally on the relative mileage of such points to the Chicago mileage. For example, rates from New

York to Detroit, Mich., are computed at 78 per cent. of the rate from New York to Chicago. In the same manner rates from New York to Indianapolis, Ind., are 93 per cent. of the New York-Chicago rates; Cincinnati, O., 87 per cent.; Erie, Penn., 60 per cent.; Columbus, O., 77 per cent.; Cleveland, O., 71 per cent.; St. Louis, Mo., 116 per cent. Thus the New York-Chicago rates being at all times applied as the basis would, when changed, create relative changes in the rates to other Western points. In a similar manner the relation as to rates is maintained from the other Eastern cities. When the rates from New York to Western points are changed like changes are made from Boston, Philadelphia and Baltimore, and points receiving the same rates, the 'differentials' as between the Eastern cities being at all times maintained.

Wholesale Prices, Wages and Transportation, Senate
Rep. No. 1394, 2d Sess. 52d Con., Part I, pp. 429,
430.

And so with reference to through rates from Kansas and Nebraska points to the seaboard. "The through rates to the Eastern seaboard are generally made on the combination of the rates east and west of the Mississippi River."

Wholesale Prices, Wages and Transportation, Senate
Rep. No. 1394, 2d Sess. 52d Con., Part I., p. 552.

The rates and distances from New York to Chicago are taken as the base in the territory between those cities, because of the water competition from Chicago to New York via the lakes, the Erie Canal, and the Hudson River; and that line of water transportation is the only water line from the Northeastern seacoast to Mississippi River. But the Southern territory is surrounded on the east and south by the Atlantic Ocean and the Gulf of Mexico, and on the west and north by the Mississippi and Ohio Rivers. It is also penetrated by numerous rivers navigable by steamboats from the ocean for considerable distances into the interior.

It is therefore impossible to adopt in the South any one set of rates or any particular distance as a standard for making rates for that entire territory. To illustrate, if it were attempted to take the distance and the rates from New York to New Orleans as a standard, and to fix the rates from New York to Norfolk, or

New York to Charleston, or New York to Savannah, or New York to Montgomery, or New York to Columbus, or New York to Eufaula, or New York to Mobile as certain per cents of the rates from New York, as governed by mere distance, such rates could not be maintained like similar percentages are obtained between certain cities in the territory between Chicago and New York, because they would be cut in almost every instance, either by the all water lines, or by the rail and water lines.

The only possible way by which the basing system employed in the territory between New York and Chicago could be made applicable in the Southern territory, would be to make all carriers by water subject to the Act to Regulate Commerce, and establish by legislative enactment, or otherwise, certain relative rates to and from all of the principal points in the South, and then require all carriers, whether by rail or water, to maintain the rates so fixed.

LXIX.

COMBINATION RATES.

The rate on cotton from Troy to New Orleans is 68 cents per 100 pounds. It is what is known as a combination rate; and is made up of a local rate of 23 cents per 100 pounds, charged either by the Alabama Midland Ry., or by the Georgia Central R. R., from Troy to Montgomery, and a competitive rate of 45 cents, charged either by the Louisville & Nashville R. R., or by some other competitive line, from Montgomery to New Orleans.

Trans. p. 59 right col.

There is no pretence that the local rate of 23 cents per 100 pounds, is unreasonably high on cotton shipped from Troy, destined to stop at Montgomery.

The Commission, itself, has held that where complaint is made of rates, as being unreasonably high, the burden of proof is on the complainant; and, if no proofs are put in by either party, the complaint will be dismissed.

1 I. C. C. Rep., 104, *Fulton vs. C., St. P., M. & O. R. R.*

There was no proof to show that said rate was unreasonably high; on the contrary, the proof shows that said rate is ap-

proved by the Railroad Commission of Alabama as a just and reasonable rate.

McLendon, Trans., p. 351.

There is no pretence that the rate of 45 cents per 100 pounds is unreasonably high, on cotton originating at Montgomery, destined to New Orleans.

Said rate is necessarily a very low rate; because it is the result of competition between the following lines:

(1) The Louisville & Nashville Railroad from Montgomery to New Orleans.

(2) The Alabama River to Mobile; and thence to New Orleans.

(a) Via steam and sailing vessels.

(b) Via Louisville & Nashville Railroad.

(3) The Western Railway of Alabama to Selma; thence via the East Tennessee, Virginia and Georgia Railroad to Meridian; thence via the New Orleans and Northeastern Railroad to New Orleans.

(4) The Western Railway of Alabama to Selma; thence via the East Tennessee, Virginia & Georgia Railroad to Meridian; thence via the Queen & Crescent Railway to Jackson, Miss.; thence via the Illinois Central Railroad to New Orleans.

Said lines are illustrated by a Diagram No. 3, referred to in Section XXXIII.

Considering that the rate on cotton from Montgomery to New Orleans has been reduced to 45 cents per 100 pounds by the competition (water as well as rail) above referred to, it is unreasonable to require any further reduction in it.

As the Commission is in the habit of saying that basing points like Montgomery and New Orleans are unduly favored with low competitive rates, while intermediate local stations are charged too much, it is not to be supposed that the Commission, itself, intends to still further favor Montgomery, and New Orleans, by requiring a still further reduction on cotton rates between those points.

But, if the rate of 45 cents per 100 pounds, on cotton from Montgomery to New Orleans, is not to be reduced, it is im-

possible to give Troy a rate of 50 cents per 100 pounds to New Orleans, unless the Alabama Midland Railway is forced to accept 5 cents per 100 pounds for transportation from Troy to Montgomery, when the Railroad Commission of Alabama has approved a rate of 23 cents per 100 pounds as a reasonably low rate for that service.

It has been repeatedly held that there is no law which requires the Alabama Midland Railway and the Louisville & Nashville Railroad to make joint through rates on cotton from Troy to New Orleans.

The Alabama Midland Railway has the right to refuse to carry beyond its own line which terminates at Montgomery.

110 U. S., p. 680, A. T. & S. F. R. R. vs. D. & N. O. R. R.

41 Fed. Rep., 563, L. R. & M. R. Co. vs. St. L. I. M. & S. Ry. Co.

65 Fed. Rep., 41, St. L. Drayage Co. vs. L. & N. R. R. Co.

And the Louisville & Nashville R. R. Co. has the right to refuse to make joint through rates with the Alabama Midland Railway from Troy, a point which is not located on the line of the Louisville & Nashville Railroad.

37 Fed. Rep., 572, K. & I. Bridge Co. vs. L. & N. R. R. Co.

41 Fed. Rep., 563, L. R. & M. R. Co. vs. St. L. I. M. & S. Ry. Co.

51 Fed. Rep., 474, 475, O. S. L. & U. N. Ry. Co. vs. N. P. R. Co.

52 Fed. Rep., 915, C. & N. W. Ry. Co. vs. Osborne.

59 Fed. Rep., 402, 403, L. R. & M. P. Co. vs. St. L. I. M. & S. Ry. Co.

63 Fed. Rep., 778, 779, L. R. & M. R. Co. vs. St. L. & S. W. Ry. Co.

65 Fed. Rep., 41, St. Louis Drayage Co. vs. L. & N. R. R. Co.

If the Alabama Midland Railway and the Louisville & Nashville Railroad see proper to issue through bills of lading and make joint through rates on cotton from Troy to Montgomery, it is a voluntary act upon their part; and it is a convenience and advantage to the shipping public at Troy.

But the mere fact that those two companies have endeavored to accommodate the shipping public at Troy by joining in

through rates and in issuing through bills of lading, which the public had no right to require, furnishes no reason for adjudging their through rate to be unreasonably high, merely because it is made by combining the reasonable rates which those companies would have respectively charged if such through rates had been agreed upon, and such through bills of lading had not been issued. If the rates respectively charged by those roads for transportation over their respective lines were just and reasonable before they were combined into a through rate, the through rate which resulted from such combination must itself be just and reasonable. Any other view of the question would force the railroads of this country to abandon the system of through rates, and through bills of lading, in order to be allowed to charge their own reasonable rate. Such a course would not result in any decrease in the rates between different points; but it would seriously inconvenience the shipping public.

LXX.

THE COMMISSION HAS NO POWER TO FIX RATES.

One order made by the Commission enjoins the defendants to charge "on shipments of cotton from Troy aforesaid through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per 100 lbs."

Trans., p. 69.

In the case of the James & Mayer Buggy Co. vs. The C., N. O. & T. P. Ry. Co. et al., known as the Social Circle case, one of the orders made by the Commission was that the defendants in that case, desist from making any charge for the transportation of *first-class* freight from Cincinnati to Atlanta, in excess of \$1 per 100 lbs.

See 4th I. C. C. Rep., p. 757.

It was with reference to the above mentioned order, made by the Commission in the Social Circle case, that this Court said:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below, and is discussed in the briefs of counsel.

"We do not find any provision of the Act that expressly, or by necessary implication, confers such a power."

See C., N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., p. 196.

In the case of the I. C. C. vs. L. & N. R. R. Co., the Commission ordered that so long as the rate charged by the Louisville & Nashville R. R. Co. for any kind or class of coal from certain mines to Memphis, shall not exceed the amount of \$1.40 per ton, the rate charged by said company for the transportation from said mines to Nashville, of coal classed as "run of mines, nut and slack," shall not at any time exceed the amount of \$1 per ton; and the rate charged by said company for the transportation from said mines to Nashville, of coal classed as "screened coal," shall not at any time exceed the amount of \$1.15 per ton.

In other words the Commission, in that case, assumed the power to fix certain maxima rates from said mines to Nashville, by requiring them to bear a certain relation to the rates charged from the same mines to Memphis.

Judge Clark, holding the United States Circuit Court for the Middle District of Tennessee, said:

"The Social Circle case denies power in the Commission to fix rates, and puts that question at rest."

See I. C. C. vs. L. & N. R. R. Co., 73 Fed. Rep., 429.

In the case of the I. C. C. vs. The Lehigh Valley R. R. Co., the Commission ordered the defendant to desist from charging any greater compensation for the transportation of divers kinds and sizes of anthracite coal between certain points, than certain rates designated in said order; and among other maxima rates fixed in said order, was a rate of \$1.50 per ton for the transportation of lump coal.

Judge Acheson, holding the Circuit Court of the United States for the Eastern District of Pennsylvania, after quoting from the decision of this Court in the Social Circle case, said:

"These views of the Supreme Court decisively show that the Interstate Commerce Commission is not clothed with the power to fix rates which it undertook to exercise in this case."

See I. C. C. vs. L. V. R. R. Co., 74 Fed. Rep., 787, 788.

In the case of the Interstate Commerce Commission vs. The Northeastern R. R. Co. of South Carolina et al., the Commission ordered the defendants to desist from charging any greater compensation for the transportation of certain vegetables, between certain points, than certain maxima rates specified in said order;

and, among other maxima rates fixed in said order, was a rate of \$3.84 per 100 pounds on strawberries.

Judge Simonton, holding the Circuit Court of the United States for the District of South Carolina, after stating the decision of this Court in the Social Circle case, said :

"The case at bar seems to be on all fours with this case. The Interstate Commerce Commission asks this Court to enforce its orders fixing rates for truck between Charleston and New York. The Court can only enforce the lawful orders of the Commission. As has been seen, the Commission is not warranted by the Act of Congress, to fix rates, and to this extent its order is not lawful."

See I. C. C. vs. N. E. R. R. Co. of South Carolina et al.,
74 Fed. Rep., Rep., pp. 72, 73.

In the case at bar, the Court of Appeals of the Fifth Circuit followed the Social Circle case, and held that the Commission has no power to fix rates.

See I. C. C. vs. Alabama Midland Ry. Co. et al., 74 Fed. Rep., p. 722.

In the case of the I. C. C. vs. C., N. O. & T. P. Ry. Co. et al., Judge Sage said: "The power of the Commission to fix rates was denied by the Supreme Court in the Cincinnati, New Orleans & Texas Pacific Railway Co. vs. The Interstate Commerce Commission, 162 U. S., 196, known as the Social Circle case."

76 Fed. Rep., 184, I. C. C. vs. C., N. O. & T. P. Ry. Co. et al.

In every case decided at Circuit, or in the Court of Appeals, since the decision in the Social Circle case, it has been held that the Social Circle case determined the question of the power of the Commission to fix rates.

LXXI.

It was argued by counsel for the Commission, in the Circuit Court of Appeals, that this Court, in the Social Circle case, sustained an order of the Commission fixing a maximum rate.

Counsel said :

"In the 'Social Circle' case the order of the Commission prescribed a maximum rate to Social Circle, by directing the defendants to cease and desist from charging or receiving any greater compensation in the aggregate for transportation of buggies, etc., for the shorter distance to Social Circle, than they charge or receive for transportation of such freight for the longer distance over the same line to Augusta."

It is true that this Court sustained *that* order of the Commission upon the facts of that case; but I deny that said order "prescribed a maximum rate," or any other rate, to Social Circle. Said order left the defendants at perfect liberty to charge any rates that were reasonable and just; and the only requirement of said order was that the rates to Social Circle should not exceed the rates to Augusta.

Said order was made in almost the exact language of the long and short haul clause of the fourth section of the Act to Regulate Commerce, which declares it to be unlawful to charge any greater compensation in the aggregate for the transportation of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line, in the same direction, the shorter being included within the longer distance. The Commission found as facts in the Social Circle case, that the transportation to Social Circle was done under substantially similar circumstances and conditions as the transportation to Augusta; that the transportation to Social Circle was for a shorter distance than the distance to Augusta; that it was over the same line, in the same direction, and that the shorter was included within the longer distance. The Commission having found those facts, ordered, almost in the language of the fourth section, that the defendants should cease and desist from charging any greater compensation to Social Circle than they charged to Augusta; but it left defendants free to fix their own rates either to Augusta, or to Social Circle, provided such

rates be reasonable and just, and provided the rates to Social Circle do not exceed those to Augusta.

In the case at bar, the Commission has ordered the defendants not to charge more than the maximum rate of 50 cents per 100 lbs. on cotton from Troy, through Montgomery, to New Orleans.

In other words, the only order of the Commission, in the Social Circle case, which this Court approved, was an order which did *not* fix maxima rates, or any other rates; while the order of the Commission in the case at bar, does fix a maximum rate on cotton from Troy to Montgomery.

LXXII.

It was argued by counsel for the Commission in the Circuit Court of Appeals, that "in what this Court says in 'Social Circle' case as to power of Commission to prescribe rates, it had in mind the exercise by the Commission of a power 'to itself fix rates—' that is, 'of its own motion, and without hearing the parties to be affected.'"

In the Social Circle case, the Commission did *not* attempt "to itself fix rates," "*of its own motion, without hearing the parties to be affected.*"

By reference to the report of the case of the James & Mayer Buggy Co. vs. C., N. O. & T. P. Ry. Co. et al., known as the Social Circle case, 4 1. C. C. Rep., p. 745, it will be seen that the James & Mayer Buggy Co. filed a written complaint before the Commission, in which it insisted that said company ought not to be compelled to pay the same freight charge to Atlanta as to Augusta, 171 miles the greater distance. It will be seen that said complaint was answered by the defendants thereto. pp. 745, 747. It will be seen that the defendants in their answers insisted "that the rate to Atlanta is no more than reasonable for the service rendered." pp. 746, 750. It will be seen that testimony was heard by the Commission as to the reasonableness of the rate to Atlanta; and that upon the pleadings and testimony, the Commission said:

"We do not feel justified in determining upon a more moderate rate than \$1 per 100 pounds of first-class freight, in less than car loads." p. 751.

This Court, in its decision in the Social Circle case, refers to the fact that the James & Mayer Buggy Co. filed a complaint before the Commission, insisting that the rate charged to Atlanta was excessive; that the defendants in that case claimed that the rate to Atlanta was reasonable; that testimony was offered and heard before the Commission; and that the order of the Commission was based upon the pleadings and proof in that case.

See C., N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., pp. 185, 186, 194, 195.

It is impossible, therefore, to suppose that in what this Court said in the Social Circle case, as to the power of the Commission to prescribe rates, it had in mind the exercise by the Commission of a power "to itself fix rates," i. e., to fix rates "*of its own motion and without hearing the parties to be affected*;" because the rate which the Commission fixed in that case to Atlanta was not fixed "*of its own motion*," but was fixed *upon a full hearing of "the parties to be affected"*; which hearing was had as well, upon pleadings, as upon proof.

LXXIII.

It was argued by counsel for the Commission in the Circuit Court of Appeals, that when this Court said in the Social Circle case that the Commission had no power "to itself fix rates," it had "reference to the action of the Commission in prescribing a rate to Atlanta on evidence which it is intimated, was not sufficient, and in the absence of proof of material facts."

This Court, in discussing "the action of the Interstate Commerce Commission, in fixing a maximum rate of charges for the transportation of freight of the first-class in less than carloads from Cincinnati to Atlanta," said:

"This question may be regarded as twofold, and is so presented in the assignment of error filed on behalf of the Commission, namely: Did the Court err in not holding that, in point of law, the Interstate Commerce Commission had power to fix a maximum rate, and, if such power existed, did the Court err in not holding that the evidence justified the rate fixed by the Commission and not decreeing accordingly?"

C., N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., p. 194.

This Court disposed of the last question first ; and said that as both the Circuit Court, and the Court of Appeals found, as a fact, that the rate to Atlanta was reasonable, this Court did not feel disposed "to review their finding on that matter of fact."

This Court having disposed of the question of fact as to whether "the evidence justified the rate fixed by the Commission," took up the question of law as to "whether Congress intended to confer upon the Interstate Commerce Commission the power to itself to fix rates;" and it was with reference to that question of law, that the Court said: "We do not find any provision of the Act that expressly, or by necessary implication, confers such a power."

C., N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., p. 196.

It is impossible, therefore, to suppose that this Court, in using the language just quoted, had reference to the action of the Commission in prescribing a rate "on evidence which was not sufficient," or, "in the absence of proof of material facts;" because the Court had disposed of the question of "evidence," or "fact," before it entered upon the question of law as to the power of the Commission to fix rates; and it was with reference to that question of law, and not with reference to the question of fact, that the Court said: "We do not find any provisions of the Act that expressly, or by necessary implication, confers such a power."

LXXIV.

Counsel for the Commission, in the Circuit Court of Appeals, argued that this Court, in the Social Circle Case, had in mind a certain general order issued by the Commission on March 23, 1889, in the "Import case;" which order *was* made by the Commission, "of its own motion, and without a hearing of the parties to be affected."

I submit that it is not treating this Court with due respect, to assume that it decided a principle in one case, which it really intended for a different case.

But counsel are mistaken in supposing that the bill which was filed by the Commission in the "Import case" was filed to enforce said general order of March 23, 1889. Said bill was filed to enforce an order which was made by the Commission *on*

January 29, 1891. The last mentioned order was made by the Commission upon a written complaint filed by the New York Board of Trade and Transportation against certain railroad companies. Said companies answered the complaint; testimony was taken before the Commission upon the issues joined; and a full hearing was had upon pleadings and proof, which resulted in said order of *January 29, 1891*, to enforce which the bill in the "Import case" was filed by the Commission.

T. & P. Ry. Co. vs. I. C. C., 162 U. S., pp. 199, 200, 201.

The main question in the "Import case," as stated by this Court, itself, was, "whether the Commission erred, when making the order of *January 29, 1891*, in not taking into consideration ocean competition," etc.

See 162 U. S., p. 205.

In the "Import case," the power of the Commission to fix rates was not discussed, either by Court or counsel, and as the validity of the general order of March 23, 1889, made by the Commission "of its own motion and without a hearing of the parties to be affected," was not involved in that case, it is impossible to suppose that this Court could have had in mind the "Import case," when deciding, in the Social Circle case, that the Commission has no power to make or fix rates.

LXXV.

Counsel for the Commission, in the Circuit Court of Appeals, referred to the language of this Court in the Social Circle case, where it was said that "if the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is *prejudged* by the Commission to be reasonable." Counsel contended that the language just quoted must necessarily refer to some such general order as was made by the Commission on March 23, 1889, in the "Import case," where the Commission acted "of its own motion, and without a hearing of the parties to be affected."

I have shown, in Section LXXIII, that the order of the Commission in the Social Circle case, which this Court was reviewing when it used the word "prejudged," was not made by the Commission "of its own motion," but was made upon a full hearing of "the parties to be affected."

But, whether an order is made by the Commission "of its own motion," or is made upon a full "hearing of the parties to be affected," it is equally illegal, if it attempts to fix maximum rates to be charged *in the future*. In either case, the Commission *prejudges* the reasonableness of the rate so fixed by itself, and precludes the carrier from showing that the rate so fixed, in advance, by the Commission, is unreasonably low.

To illustrate: Although the order in the Social Circle case, and the order in the case at bar, were both made by the Commission upon a full "hearing of the parties to be affected," they both "prejudge" the question as to what is a reasonable rate to be charged *in the future*. In the Social Circle case, the Commission "prejudged" that \$1 per hundred pounds is a reasonable rate on first-class freight from Cincinnati to Atlanta; and in the case at bar, it "prejudged" that 50 cents per hundred pounds is a reasonable rate on cotton from Troy to New Orleans. The rate which the Appellees charge is 68 cents per hundred pounds. The Commission was fully authorized to find and report whether said rate of 68 cents per hundred pounds is reasonable or not; but it has no authority to *prejudge*, as it did, that the rate, *in the future*, shall not exceed 50 cents per hundred pounds.

In the case of Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362, the Railroad Commission of Texas had undertaken to fix certain rates, which were declared by the Court to be unreasonably low; the Court, however, did not undertake to "prejudge" what rates would be reasonably high, to be charged *in the future*. On the contrary, the Court held that though it is within the power of a Court of Equity in such case to decree that the rates so established by the Commission are unreasonable and unjust, and to restrain their enforcement; it is not within its power to establish rates itself, or to restrain the Commission from again establishing rates.

See 154 U. S., 362, Reagan vs. Farmers Loan & Trust Co.
See 156 U. S., 663, St. L. & S. F. Ry. vs. Gill.

And so under the Act to Regulate Commerce, while it is within the power of the Interstate Commerce Commission to find and report that the rates established by a railroad company are unreasonable and unjust, it is not within its power to establish rates itself, or to restrain the company from again establishing rates.

Except in those states whose railroad rates are fixed by statute, or by a Commission expressly authorized to fix them, the rates which a railroad may reasonably charge necessarily vary, from time to time, with the circumstances and conditions under which they are made.

To illustrate: It was found in the Social Circle case, that prior to the construction of the Kansas City, Memphis & Birmingham Railroad from Memphis to Birmingham, the rate on first-class freight from Cincinnati to Birmingham had been \$1.08 per hundred pounds; and it was not shown that it had ever been complained of as unreasonably high. But upon the completion of that road, the rate from Memphis to Birmingham was reduced. And, in order to preserve the relative adjustment of rates to Birmingham as between Memphis and Cincinnati, the rate had to be reduced from Cincinnati to Birmingham from \$1.08 to 89 cents per hundred pounds. And yet the service performed by the railroads between Cincinnati and Memphis was the same after the completion of said road, as before.

This is one out of hundreds of instances that might be cited to show that reasonable rail rates necessarily vary, from time to time, with the circumstances and conditions under which they are made; and that it is impossible for any judicial, or *quasi* judicial tribunal to decide what rates will be reasonably high to be charged *in the future* without "prejudging" the question; and "prejudging" it before the facts and circumstances arise which are necessary for its determination.

Of course, where rates are fixed by statute, or by a Commission expressly authorized to fix them, the Courts are precluded from examining into the circumstances and conditions affecting the reasonableness of such rates; and they are limited in their inquiry to determining whether the rates are so low as to practically amount to taking property without compensation.

LXXVI.

Counsel for the Commission, in the Circuit Court of Appeals, contended that the "Import case" expressly recognizes the authority of the Commission to prescribe a rate in a given case, after due consideration of material facts and circumstances.

I have shown in Section LXXIV., that the power of the Commission to fix rates was not discussed in the "Import case."

Counsel referred to the following language used by this Court in the "Import case:"

"We do not refer to these matters for the purpose of indicating what conclusions ought to have been reached by the Commission, or by the Courts below, in respect to what were proper rates to be charged by the Texas & Pacific Railway Company. That was a question of fact, and if the inquiry had been conducted on a proper basis, we should not have felt inclined to review conclusions so reached. But we mention them to show that there manifestly was error in excluding facts and circumstances that ought to have been considered, and that this error arose out of a misconception of the purpose and meaning of the Act."

T. & P. Ry. Co. vs. I. C. C., 162 U. S., p. 235.

The "facts and circumstances" which this Court held ought to have been considered by the Commission, and by the Courts below, were those attending the ocean competition from Liverpool to San Francisco; and what this Court meant, by the language just quoted, was that if the Commission, and the Courts below, had taken those competitive facts and circumstances into consideration, and had then been of opinion, after giving them due weight, that the rates charged by the Texas & Pacific Railway Company from New Orleans to San Francisco were unreasonable, or improper, this Court would not have felt inclined to review the conclusions of fact so reached.

I have never contended that the Commission is not authorized, after giving due consideration to all such facts and circumstances as ought to be considered, to find and report whether the rates now charged by the defendants from Troy to New Orleans on

cotton, are just and reasonable, or not. On the contrary, I have always conceded that the Act does confer upon the Commission power to find and report upon that question, and to declare, if it so thinks, that said rates are unjust and unreasonable. But my contention is that when the Commission shall have found and reported that the rates now charged by the defendants are improper or unreasonable, its functions, like those of a Court of Equity, are at an end; and that the Commission has no more power than a Court of Equity to "prejudge" what rates will be just and reasonable for the defendant to charge *in the future*.

LXXVII.

Counsel for the Commission, in the Circuit Court of Appeals, contended that the power of the Commission to prescribe a rate is necessarily implied from the provisions of the statute.

Counsel admits that the power is not expressly given by the Act; his only contention is that such power is necessarily implied.

This contention of counsel was answered by this Court in the Social Circle case in the following language: "We do not find any provision of the Act that expressly, or by necessary implication, confers such a power."

C., N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., p. 196.

In the Social Circle case, on the cross appeal, which the Commission prayed from the decree of the Circuit Court of Appeals, *and which cross appeal was prayed for the express purpose of getting the opinion of this Court upon the question as to whether the Commission has power to fix rates*, the first assignment of error, made by the Commission, was in the following language: "That said Circuit Court of Appeals erred in not holding that, in point of law, the said Interstate Commerce Commission had power to fix the maximum rate which it did fix as shown by the record."

There cannot, therefore, be the slightest doubt but that the exact question was raised in that case, which has been argued in this case; and the argument of counsel for the commission in that case was substantially the same as in this case.

Counsel contended in that case, as in the case at bar, that the power of the Commission to fix rates, though not expressly given, is necessarily implied.

I make the following quotations from "Points Submitted by Mr. Edmunds and Mr. Hammond, of counsel for the Interstate Commerce Commission," in this Court, at the October Term, 1894, pp. 10-12.

"II. The Commission had the power to establish a maximum rate on a definite class of goods between defined places in different States *in a case in which the subject was properly before them, as it was in this case.* The charge from Cincinnati to Atlanta was a necessary element in the disposition of the charge to be made from Cincinnati to Social Circle and Augusta, for if the Commission had stopped at the requirements of a given rate from Cincinnati to Social Circle as not exceeding that to Augusta, the roads from Cincinnati to Chattanooga and so to Atlanta might have so changed their charges as to have made a through rate unjust to the road from Atlanta to Social Circle and Augusta. Thus it was essential to complete and permanent justice and relief that both points should be covered by the decision of the Commission."

"The 12th section of the Interstate Commerce Act, as amended, requires the Commission "to execute and enforce the provisions of this Act." The 13th section of the act authorizes the Commission to investigate any complaints that may be made concerning interstate transportation and to "institute any inquiry on its own motion" in respect of interstate transportation. The 14th section provides "that whenever any investigation shall be made by said Commission, it shall be its duty to make its report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation," etc., and the Act makes all such proceedings a matter of record. The 15th section provides that when the Commission shall have found that any wrong is being done by any carrier and shall have come to its conclusion thereon in the manner before stated, it shall forward a copy of its report to the carrier, "together with a notice to said common carrier to cease and desist from such violation," etc. Thus it was

distinctly within the substantial and remedial language of the act that the Commission should have power, on a complaint that transportation charges were too high, to require that they should not exceed a certain sum named in the order of the Commission. Again, it is obvious that a mere order of the Commission in the case in hand, or in any other similar case, that a particular rate complained of was excessive and should not be demanded, and, stopping there, would be absolutely futile, not to say ridiculous, for, if the excessive rate were found to be one dollar and the true and just rate fifty cents in a given case, if the Commission were to direct that one dollar should not be charged, the carrier could obey that order by charging ninety-nine cents and then, after a new complaint should have been instituted and heard and ninety-nine cents found to be excessive, that order could be obeyed by reducing the charge to ninety-eight cents, and so on, step by step, on a fresh suit for each case, at last reach the just rate of fifty cents. It is worse than absurd, we submit, to put any such construction as this upon the Act of Congress."

I make the following quotations from "Points and Suggestions Supplemental to Briefs filed on Behalf of the Interstate Commerce Commission at the October Term, 1894," of this Court in the Social Circle case; which supplemental points and suggestions were filed at the October Term, 1895, of this Court.

See pp. 8 to 10.

"It is obvious that the largest part of the duties of the Commission were made to relate to the investigation and decision upon the conduct of the carriers. If this be so, it would necessarily follow that the Commission must have the power, under this general authority given to it, to determine not only whether a particular charge was reasonable, but what the carrier ought to do in respect of a reduction of such charges. This is precisely what the Commission did in this case. It found (and the whole evidence fully sustains its finding) that the price charged for the carriage from Cincinnati to Atlanta was excessive, and that it ought not to be above the one dollar per hundred pounds, which the Commission fixed as a reasonable rate. To hold that the Commission had the authority only to decide that the rate of \$1.01 per hundred pounds, or \$1.07 per hundred pounds, from Cincinnati to Atlanta, was unreasonable, and stop there, would,

it is submitted, be absurd. A necessary and inseperable part of such a decision must be a determination of what, in the opinion of the Commission, a reasonable and proper rate would be."

"As has been stated in the briefs at the last term, the result of holding that the Commission only had the power to say that the particular rate was unreasonable, would be that the carrier might reduce his rate one cent per hundred pounds, and thereby technically save himself from any condemnation under the finding of the Commission, and so that the complaint would have been completely answered, and the finding of the Commission would have been completely conformed to. Then, on another complaint and a similar finding, another cent per hundred pounds reduction could be made by the carrier, and that decision would have been completely conformed to; and so on *ad infinitum*. The absurdity of such a proposition is too apparent to need any discussion unless it might be supposed to have been the policy of Congress to so frame them as to render these remedial Acts absolutely nugatory."

"We submit, therefore, that the rate from Cincinnati to Atlanta of one dollar per hundred pounds, was reasonable and proper, and that the Commission had authority to fix that maximum."

"It has been suggested that these questions were not properly before the Commission; to which it is answered that the Commission, by the statute had the right on its own motion to investigate and decide upon everything embraced in the Act; and, secondly, that the petition of the particular complainant distinctly raised the question of reasonable rates from Cincinnati to Atlanta. The sixth clause of the complaint distinctly states that the complainant ought not to be compelled to pay the same rate on shipping vehicles to Atlanta as to Augusta. (R., p. 6, cl. 6)."

It seems to me to be useless to consume the time of this Court in replying to arguments which have already been considered by this Court; but as they were urged in the Circuit Court of Appeals, I assume that they will be again presented to this Court.

After the decision of this Court, in the Social Circle case, the

same arguments were submitted to the Circuit Court of Appeals, in the case at bar, 74 Fed. Rep., 715, and to the Circuit Court in the case of I. C. C. vs. C., N. O. & T. P. Ry. Co. et als., 76 Fed. Rep., 183, and in both cases the Court declined to follow them.

LXXVIII.

In Alabama, a "Board of three railroad Commissioners are empowered *to revise tariffs* from time to time, and if too high, or unjustly discriminative, to notify companies of changes required, to approve tariffs when satisfactory, and *to increase or reduce rates* as experience may show to be just."

See 4 An. Rep. I. C. C. (1890), p. 243.

In Arkansas, "the Governor, Secretary of State and Auditor of Public Accounts constitute the Board of Railroad Commissioners, and may *reduce rates* when profits exceed a prescribed limit."

4th An. Rep. I. C. C. (1890), p. 244.

In California, a "Commission of three members is empowered *to establish, alter and publish transportation charges*, and to hear and determine complaints."

See 4th An. Rep. I. C. C. (1890), p. 244.

In Florida, a "Board of three Commissioners is empowered *to make, revise and alter tariffs of railway charges*," etc.

See 4th An. Rep. I. C. C. (1890), p. 246.

In Georgia, a "Board of three Commissioners is empowered *to make, revise and alter tariffs of railway charges*."

4th An. Rep. I. C. C. (1890), p. 246.

In Iowa, a "Board of Railroad Commissioners is authorized to hear and decide complaints subject to revision of regular courts, and *to make, revise and alter schedules of maximum charges*."

4th An. Rep. I. C. C. (1890), p. 247.

In Illinois, a "Board of three Commissioners is empowered *to make, revise and alter transportation charges*," etc.

4th An. Rep. I. C. C. (1890), p. 249.

In Kansas, a "Board of three Commissioners is authorized to

investigate complaints *and the rates fixed by the Board shall be accepted by the companies,*" etc.

4th An. Rep. I. C. C. (1890), p. 250.

In Maine, a "Board of three Commissioners may, on complaint, and after notice, *revise and alter tariffs of charges* for one year."

4th An. Rep. I. C. C. (1890), p. 252.

In Minnesota, a "Board of three Railroad Commissioners is empowered to require companies *to make changes in tariffs*, and if they refuse, *to make tariffs for them,*" etc.

4th An. Rep. I. C. C. (1890), p. 253.

In Mississippi, a "Board of three Commissioners is empowered *to revise, alter and approve the tariffs* of railroad companies, to supervise the same, and *increase or reduce charges* from time to time, as experience may show to be just."

4th An. Rep. I. C. C. (1890), p. 254.

In North Dakota, a "Board of three Railroad Commissioners is empowered *to alter tariffs,*" etc.

4th An. Rep. I. C. C. (1890), p. 258.

In South Carolina, a "Board of three Railroad Commissioners is authorized *to make and alter tariffs of freight charges,* etc.

4th An. Rep. I. C. C. (1890), p. 262.

It will be noticed that the Act to Regulate Commerce does not confer upon the Interstate Commerce Commission the power "to revise tariffs;" nor "to fix rates;" nor "to increase or reduce rates;" nor "to establish or alter transportation charges;" nor "to make, revise or alter tariffs of railway charges;" nor "to make, revise or alter schedules of maximum charges;" nor "to correct charges;" nor "to make changes in tariffs;" nor "to revise, alter or approve tariffs;" nor "to increase or reduce charges;" nor "to make or alter tariffs of freight charges."

If Congress had intended to confer upon the Interstate Commerce Commission the power to make rates, the statutes of the states above referred to would have furnished precedents, and some such provisions as are quoted above would have been found in the Act to Regulate Commerce.

In Massachusetts, a "Board of three Commissioners is authorized to supervise railroads and see that they conform to the law, to investigate complaints, and make reports and recommendations thereon."

4th An. Rep. I. C. C. (1890), p. 251.

In Kentucky, a "Board of three Railroad Commissioners is authorized to supervise the companies in matters pertaining to their duties to the public, and to hear and determine complaints subject to the revision of the regular Court."

4th An. Rep. I. C. C. (1890), p. 251.

In Missouri, a "Board of Railroad Commissioners is authorized to see that schedules of rates are fair and just, to hear and determine complaints, subject to revision by the Court, and to see that the provisions of the Act are enforced."

4th An. Rep. I. C. C. (1890), p. 254.

In Nebraska, a "Board composed of high State officials and secretaries is empowered to supervise the business of the companies, and to hear and decide complaints subject to revision by the regular Court."

4th An. Rep. I. C. C. (1890), p. 255.

In New Hampshire, a "Board of three Commissioners is charged with supervision of railroads, seeing that they comply with the law, making investigations, and reporting thereon."

4th An. Rep. I. C. C. (1890), p. 256.

In New York, a "Board of three Commissioners has general supervision of railroads and their operation with reference to public safety and conveniences, and it is empowered to investigate and report on violations of law."

4th An. Rep. I. C. C. (1890), p. 257.

In Oregon, a "Board of three Commissioners has power to supervise the business of the railroads as the same affects the public convenience and safety, and to hear and decide complaints, subject to the revision of the Court."

4th An. Rep. I. C. C. (1890), p. 260.

In South Dakota, a "Board of three Commissioners is em-

powered to see that the law is complied with and to prosecute companies for violation thereof, either *suo motu* or on complaint."

4th An. Rep. I. C. C. (1890), p. 262.

In Virginia, "there is one Railroad Commissioner who is required to see that the companies comply with the law, to notify them of violations of law, and, if same are continued, to report to Board of Public Works, who may direct the Commissioner to apply for an injunction to restrain such violations."

4th An. Rep. I. C. C. (1890), p. 264.

In Vermont, a "Board of three Commissioners is to have general supervision of the railroads and to report violations of law to the Legislature, to investigate failure to make connections or furnish accommodations, and to make public their conclusions, and make recommendations in respect thereto, which may be enforced by the Court."

4th. An. Rep. I. C. C. (1890), p. 265.

In Wisconsin, "one Railroad Commissioner is to have supervision of railroads, and to hear and decide complaints, subject to revision by the Courts."

4th. An. Rep. I. C. C. (1890), p. 266.

Congress, instead of giving the Interstate Commerce Commission power to *make rates*, as was done in Alabama, Arkansas, California, Florida, Georgia, Iowa, Illinois, Kansas, Maine, Minnesota, Mississippi, North Dakota, and South Carolina, conferred upon the Interstate Commerce Commission only the power to supervise the railroads, to see that they conform to the law, to investigate complaints, and make reports and recommendations thereon, subject to the revision of the Courts; thus following the precedents furnished by the statutes of Massachusetts, Kentucky, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Virginia, Vermont, and Wisconsin.

In the Social Circle case, this Court, after holding that the Interstate Commerce Commission has no power to fix rates, said that "subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disad-

vantage to persons or traffic similarly circumstanced, the Act to Regulate Commerce leaves common carriers as they were at the common law, free” . . . “*to adjust and apportion their rates* so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.”

162 U. S., p. 197, C., N. O. & T. P. Ry. vs. I. C. C.

43 Fed. Rep., p. 53, I. C. C. vs. B. & O. R. R.

73 Fed. Rep., p. 426, I. C. C. vs. L. & N. R. R. Co.

74 Fed. Rep., p. 787-788, I. C. C. vs. Lehigh Valley R. R. Co.

74 Fed. Rep., p. 722, I. C. C. vs. Alabama Midland Ry. Co. et al.

Law Rep., 1 Q. B., (1896), pp. 264, 265, Rickett, Smith Co. vs. Midland Ry. Co.

In the case of the K. & I. Bridge Co. vs. L. & N. R. R. Co., Judge Jackson said that the Act “does not undertake to prescribe anything more upon the subject of rates than that they shall be reasonable and just.”

37 Fed. Rep., 634, K. & I. Bridge Co. vs. L. & N. R. R. Co.

LXXIX.

The following cases have been cited at Circuit as showing that the English Railroad Commissioners “exercised a very analogous power in fixing through rates:”

The Midland Ry. Co. vs. The Great Western Ry. Co., 2 Nev. & Mac., Ry. and Canal Cases, 88, 95, 96, 97, 98.

The Caledonian Ry. Co. vs. The North Brit. Ry. Co., 3 *Ib.*, 56, 62.

Great North. Ry. Co. of Ireland vs. The Belfast Ry. Co., 3 *Ib.*, 411, 418.

Same vs. Same, 4 Brown & Mac., Ry. and Canal Cases, 159.

By referring to those cases, it will be seen that the English Railway Commissioners were not attempting to fix rates as between the companies and the public. In the first two cases, the Commissioners were virtually acting as arbitrators under a statute which provides that where any difference between railway companies was, under the provision of any general or special Act

required or authorized to be referred to arbitration. Such difference should, at the instance of any company party thereto, be referred to the Commissioners for their decision, in lieu of being referred to arbitration.

See 2 Nev. & Mac., p. 88; 1 Nev. & Mac., p. 6; 3 Nev. & Mac., p. 56.

In the second and third cases cited, the English Commissioners were acting under section 11 of the Act of 1873, which expressly provides that where two companies cannot agree upon a through route or rate, the matter shall be referred to the Commissioners for their decision.

1 Nev. & Mac., p. 8; 4 Brown & Mac., pp. 159, 169.

There are no such provisions in our Act to Regulate Commerce.

LXXX.

In one of the earliest cases decided by the Commission, in answer to an application to compel a certain reduction in rates, it was said by Judge Schoonmaker: "It is therefore impossible to fix them in this case, even if the Commission had power to make rates generally, *which it has not*. Its power in respect to rates is to determine *whether those which the road impose are for any reason in conflict with the statute*."

1 I. C. C. Rep., pp. 155, 156, Thacher vs. D. & H. C. Co. et al.

The power of the Commission, even as stated by Judge Shoonmaker, is greater than the Act really confers upon the Commission.

The Commission "is neither a Federal Court under the Constitution, nor does it exercise judicial power, nor do its conclusions possess the efficacy of judicial proceedings." . . . "The functions of the Commission are those of Referees or Special Commissioners, appointed to make preliminary investigation of and report upon matters for subsequent judicial examination and determination. In respect to Interstate Commerce matters covered by the law, the Commission may be regarded as the general Referee of each and every Circuit Court of the United States, upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and imposed by the Act."

37 Fed. Rep., p. 613, K. & I. Bridge Co. vs. L. & N. R. Co.

"The findings of *fact*," as made by the Commission in reference to the reasonableness of a rate, are made *prima facie* evidence by the Act; but the opinions of the Commission upon the questions of *law*, relating to the reasonableness of a rate, are not given any potency whatever by the Act. Upon the trial of the question, in the Circuit Court, as to the reasonableness of a rate, the case is heard "*de novo*, upon pleadings and proofs, the latter including not only the *prima facie* facts reported by the Commission, but all such other and further testimony as either party may introduce, bearing upon the matters of controversy." The "judgment," or "determination," as to whether a particular rate is reasonable, is to be rendered, not by the Commission, but by the Court.

37 Fed. Rep., 614, K. & I. Bridge Co. vs. L. & N. R. R. Co.

43 Fed. Rep., 43, I. C. C. vs. B. & O. R. R. Co.

49 Fed. Rep., 177, I. C. C. vs. L. V. R. R. Co.

50 Fed. Rep., 295, I. C. C. vs. A., T. & S. F. R. R. Co.

56 Fed. Rep., 926, I. C. C. vs. C., N. O. & T. P. R. R. Co.

I submit, therefore, that Judge Schoonmaker stated the power of the Commission too broadly when he said that the Commission has the right "to *determine*" whether a particular rate is reasonable or not; but I think he stated the power of the Commission correctly when he restricted it to rates "*which the roads impose*."

In this case, certain rates on cotton from Troy to New Orleans were complained of; and the Commission had the power to ascertain all the facts relating to the question as to whether they are reasonable or not; and the facts thus found by the Commission would be *prima facie* evidence when the question came before the Court for its "judgment," or "determination." The Commission might with propriety add to its findings of fact, an expression of its opinion as to whether, upon those facts, said rates are, in law, reasonable or not. As, however, such an opinion would necessarily involve matter of law, it would not be entitled, like the findings of fact, to *prima facie* weight in Court. The Commission was not content in this case, with expressing the opinion that said rates are unreasonable; but it went further, and expressed the opinion that any rates higher than 50 cents per 100 lbs. are also unreasonable. In fact, it went still further, and *enjoined* the railroad companies from making any charge higher than 50 cents per 100 lbs.

If a contract for the loan of money be made in a State where 6 per cent. is the legal rate of interest, and the contract stipulates for 10 per cent. interest, a *Court* would declare the contract void, or voidable, for usury, either as to the excess over legal interest, or as to the whole amount of the contract, dependent upon the law of the particular State.

The Court would, however, restrict its judgment to the case before it, and would adjudicate no more than that the contract which stipulated for ten per cent. interest was illegal. The Court might express the opinion that any contract stipulating for interest in excess of six per cent. would also be illegal; but the Court would not assume to enjoin the parties from entering into any future contract stipulating for interest in excess of six per cent. It would leave the parties at liberty to make such contracts as they saw proper; they taking the risk of having such contracts declared illegal, if they should stipulate for interest in excess of six per cent.

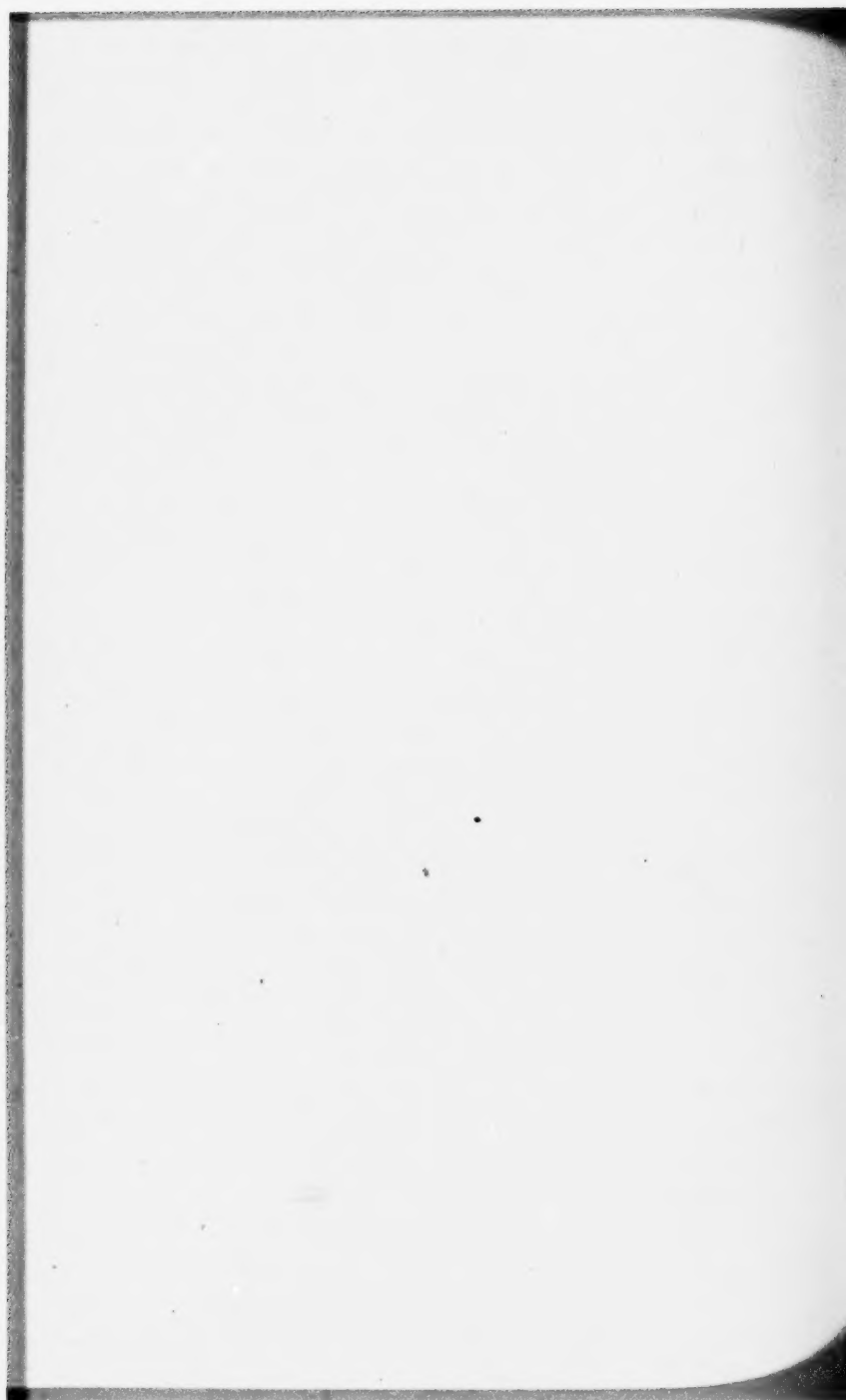
The line of reasoning under which the Commission has convinced itself that is the repository of authority to name future railroad rates, is thus stated by Commissioner Morrison in the case of *Coxe Bros. & Co. vs. L. V. R. R. Co.* (4 I. C. C. Rep., pp. 577, 578), a case in which it curiously appears that the petitioners did not desire the naming of any maximum rate, while counsel for the defendant took the opposite ground. The Commission uses the following language: "If, impressed with the belief that the existing rates were not exorbitant, a carrier should attempt compliance with the Commissioners' conclusion that they were excessive, by making the least possible reductions, repeated and continual applications would be necessary to correct a single abuse. Certainly Congress intended no such absurdity as this, but, as insisted upon by counsel for the road, when we have been convinced that rates are unjust, it will be our duty to say what they ought to be, or at least to determine upon some rate, any charge in excess of which would be unreasonable. If the duty of the Commission in respect to unjust and unlawful rates ends when it has been convinced that rates are unreasonable, and so decides them to be, and for any reason the Commission may not determine what are, as well as what are not reasonable, the regulation provided by the statute begins with complaint and ends in confusion."

It will be seen that the foregoing is simply an argument *ab inconvenienti*. It concedes that the desired power has not been expressly conferred; but since it is thought that the powers claimed to have been granted cannot be usefully exercised, without the further authority to prescribe future rates, this power also must be assumed to have been intended.

Such a claim, in respect to a statute which creates a new administrative jurisdiction, contains its own answer. If the power be not directly granted, it cannot be inferred. If it be essential to the useful operation of the statute, an amendment or addition to the law is the only way in which it can be obtained.

ED. BAXTER,

Of Counsel for Appellees as of Record.



No. 563. 203.

Brief of Wiley for Appellees.
Filed Mar. 8, 1897.

563

Supreme Court of the United States: **ED.**

OCTOBER TERM, 1896.

MAR 8 1897

CLENNEY,
CLERK.

THE INTERSTATE COMMERCE COMMISSION, *Appellant.*

versus

THE ALABAMA MIDLAND RAILWAY COMPANY, *et al.*

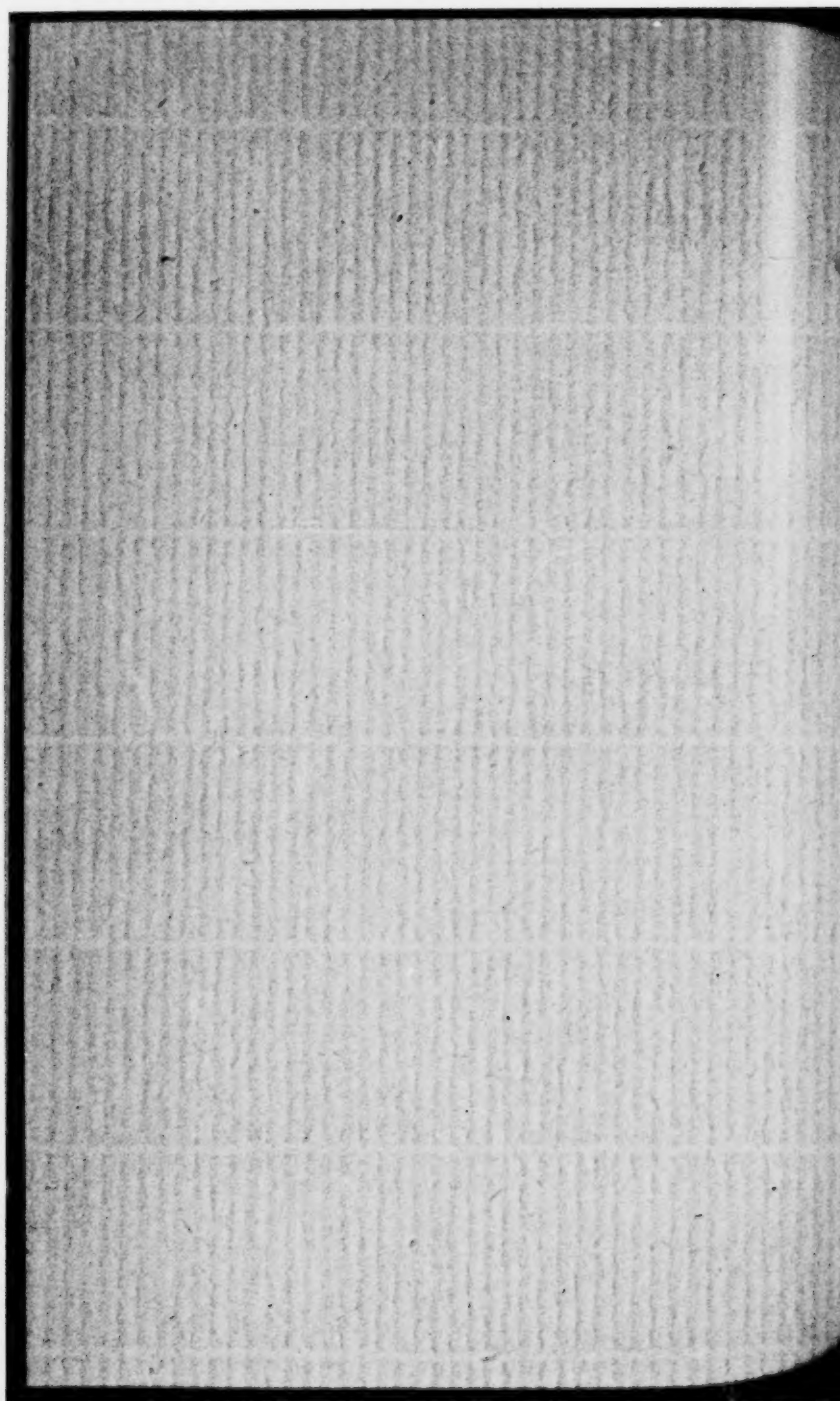
Appeal From The United States Circuit Court of Appeals,
For The Fifth Circuit.

BRIEF OF

A. A. WILEY,

Attorney for Appellees,

The Alabama Midland Railway Company and The Savannah,
Florida and Western Railway Company.



Supreme Court of the United States.

OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION, *Appellant*.

versus

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BRIEF OF

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STATEMENT OF FACTS.

The appeal in this case is taken from a judgment rendered by the United States Circuit Court of Appeals for the Fifth Judicial Circuit, affirming a decree theretofore rendered by the Circuit Court of the United States for the Middle District of Alabama, in Equity, dismissing a bill filed in that court by the Interstate Commerce Commission to enforce obedience to certain orders made by the Commission; and involves the question as to whether or not said orders are lawful, and should be regarded.

On the 27th day of June, 1892, the Board of Trade of Troy, Alabama, filed a complaint before the Interstate Commerce Commission, at Washington, D. C., against the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections, claiming that in the rates charged for transportation of property by the railroad companies mentioned and their connecting lines there is a discrimination against the town of Troy, in violation of the terms and provisions of the Interstate Commerce Act of Congress of 1887.

The general ground of complaint is, that Troy being in active competition for business with Montgomery, the defendant lines of railway unjustly discriminate in their rates against the former, and give the latter an undue preference or advantage in respect to certain commodities and classes of traffic. The specific charges insisted on at the hearing, and to which the testimony relates, are:

1. That the Alabama Midland Railway and the defendant roads forming lines with it from Baltimore, New York and the East to Troy and Montgomery charge and collect a higher rate of shipments of class goods from those cities to Troy than on such shipments *through Troy* to Montgomery; the latter being the longer distance point by 52 miles.

2. That the Alabama Midland Railway and Georgia Central Railroad and their connections unjustly discriminate against Troy and in favor of Montgomery, in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields, and only \$3.00 per ton on such shipments to Montgomery, the longer distant point by

both of said roads; and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland has to be hauled through Troy.

3. That the rates on cotton, as established by said two roads and their connections, on shipments to the Atlantic seaports, Brunswick, Savannah and Charleston, unjustly discriminate against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy is 47 cents, and that from Montgomery, the longer distance point, is only 40 cents; and that such shipments from Montgomery over the road of the Alabama Midland have to pass through Troy.

4. That on shipments for export from Montgomery and other points, within the so-called "jurisdiction" of the Southern Railway and Steamship Association, to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a lower rate is charged than the regular published tariff rate to such seaports, and that Montgomery and such other points are allowed by the rules of said Association to ship through to Liverpool *via* any of these seaports at the lowest through rates on the day of shipment, which may be less than the sum of the regular published rail rate and the ocean rate *via* the port of shipment; that this reduction is taken from the published tariff rail rate to the port of shipment; that this privilege being denied to Troy is an unjust discrimination against that town in favor of Montgomery and such other favored cities, and that it is also a discrimination against shipments which terminate at such seaports in favor of shipments for export.

5. That Troy is unjustly discriminated against in being charged on shipments of cotton *via* Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and Georgia Central.

6. That the rates on "class" goods from Western and Northwestern points, established by the defendants forming lines from those points to Troy, are relatively unjust and discriminatory as against Troy when compared with the rates over such lines to Montgomery and Columbus.

The Commission, having heard this complaint on the evidence theretofore taken, ordered, on the 15th day of August, 1893, the roads participating in the traffic involved in this case "to cease and desist" from charging, demanding, collecting or receiving any greater compensation in the aggregate for services rendered in such transportation than is specified as follows, to-wit :

1. On class goods shipped from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio, to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Ga., and Eufaula, Alabama.

2. On shipments of cotton from Troy aforesaid through Montgomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per hundred pounds.

3. On shipments of cotton from Troy aforesaid for export through the Atlantic seaports, to-wit: Brunswick, Savannah, Charleston, West Point or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid.

4. On shipments of cotton from Troy aforesaid to the ports of Brunswick, Savannah, or Charleston, no higher rate of charge than is charged and collected on such shipments from Montgomery aforesaid through Troy to said ports.

5. On shipments of class goods from New York, Baltimore, or other Northeastern points to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

6. On shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

And the defendants having failed to heed these orders, the Commission thereupon filed this bill of complaint in the Circuit Court of the United States for the Middle District of Alabama, in Equity, to compel obedience to the same. On the hearing in said Court the bill of complaint was dismissed, and complainant, the Interstate Commerce Commission, appealed the cause to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, at New Orleans, La. And, thereupon, in said last named Court, on the 2nd day of June, 1896, the decree of the said Circuit Court of the United States for the Middle District of Alabama was in all things duly affirmed; and from this judgment and decree the appellant has appealed to this Honorable Court.

THE ARGUMENT.

We will first consider what is

THE PROPER CONSTRUCTION OF THE ACT TO REGULATE COMMERCE.

In *Shaw vs. R. R. Co.* (101 U. S. 565) the Supreme Court of the United States held that no statute is to be construed as altering the common law farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express.

The rule for the construction of the Act under consideration is clearly laid down by the Court of Appeals in the case of *C. and W. R'y. Co. vs. Osborne*, 10 U. S. Apps., 434-35, in which this language is employed:

"While it is the duty of the Court to see that the provisions established by Congress are not frittered away on technical or trifling grounds, yet is also equally their duty to see that such legislation is not carried beyond its clear scope, and that the owners of private capital invested in the business of transportation be not deprived of their liberty of contract and right of control any farther than the law-making power has intended that they should be."

THE BURDEN OF PROVING EXCESSIVE RATES IS UPON COMPLAINANT.

The proof shows that the rates complained of are approved by the Railroad Commissions of Alabama and Georgia. There is no evidence showing, or tending to show, that said rates are unreasonably high. Where complaint is made of rates as excessive, the burden is upon complainant to make proof of the fact

alleged; and in the absence of such proof by either party, the complaint will be dismissed. This was so held by the Commission itself in a case where the rates on a railroad were much higher than they had previously been on the same line.

Fulton vs. The Chicago, St. Paul, Minneapolis & Omaha R. R. Co., 1 Vol. I. C. C. Reports, page 104.

AS TO THE FIRST ORDER OF THE COMMISSION.

The distance from Louisville to Montgomery by the L. & N. road is 490 miles; from Cincinnati to Montgomery is 600 miles, and from St. Louis to Montgomery is 624 miles. The distance by the Alabama Midland from Montgomery to Troy is 52 miles, and by the Georgia Central is 71 miles.

Goods are sometimes sent through in the original cars, and at other times transferred *en route* on through shipments from Louisville, Cincinnati and St. Louis *via* Montgomery to Troy. Where cars are sent through Montgomery to their destination at Troy the expense of shipping them between the L. & N. depot and Midland or Central roads is incurred. These are known as switching charges; and in cases where the freight is transferred by hand from car to car that cost is incurred in addition to the expense of switching. These are called terminal charges. Through freight shipments from western points, like Louisville, Cincinnati and St. Louis, to Montgomery and Troy, respectively, are handled at Montgomery by the L. & N. road. The proportions of through rates received by the Alabama Midland and Georgia Central railroads between Montgomery and Troy on business from Louisville, Cincinnati and St. Louis are based on the local rates of the

Alabama Midland Railway, which is the short line between Montgomery and Troy, the long line accepting the same proportions. The expense of handling local freight is greater than the expense of handling through freight per ton per mile. Shipments of freight to Troy are handled by local trains and cannot properly be called through freight, Troy not being a terminal point on the Alabama Midland Railway. The proportion of the through rates received by said roads for the service of transportation from Montgomery to Troy is substantially the local rate to Troy over the Alabama Midland Railway, which is the short line. The rates from Montgomery to Troy are fixed with the approval of the Alabama Railroad Commission for 52 miles; and the same rate would apply between any two points on the Alabama Midland for a similar distance. These proportions are reasonably low, not higher than the rates that are allowed between Montgomery and Troy by the Railroad Commission of Alabama. Indeed, the evidence tends to show that the existing rates are too low, because the Alabama Midland Railway is not earning enough to meet operating expenses, fixed charges, and pay a reasonable dividend. (See testimony of Bradford Dunham, page 272, of The Transcript of Record.)

The Louisville and Nashville Railroad is a great System entirely separate and distinct from the Plant System, of which The Alabama Midland Railway Company forms a part. For the convenience of customers and consignees at Troy goods are frequently shipped under through bills of lading, in cars with seals unbroken, from western cities like Louisville, St. Louis and Cincinnati *via* Montgomery to Troy, being delivered by the L. & N. Railroad at Montgomery to The

Alabama Midland Railway, to be transferred over its line, a distance of 52 miles to Troy. The through rate to Troy from any western market is virtually made up by the addition of the *through* rate to Montgomery *plus* the local rate to Troy. There is no law which can force connecting inter-state railroads to form continuous lines of transportation or issue through bills of lading. If the L. & N. Railroad Company refused to issue a bill of lading on a shipment of goods from a western market farther than Montgomery, a station on its own line, the Troy merchant would be compelled to pay the Midland's local rate from Montgomery to Troy before he could get those goods carried over the last named road to their destination. Mr. Justice Brewer so held in the Osborne case. He declared: "No power existed at common law, and none is given by the Act to Court or Commission to *compel* connecting companies to contract with each other, to abandon full control of their *separate* roads, or to unite in a joint tariff."

C. & N. W. R. R. vs. Osborne, 10 U. S. App., 435.

L. R. & M. R. vs. St. L., I. M. & S. Ry. Co., 41 Fed. Rep., 559.

K. & L. Bridge Co. vs. L. & N. R. R. Co., 37 Fed. Rep., 567.

Express Cases, 117, U. S. 1.

The learned Judge, Hon. John Bruce, in the opinion rendered in this cause in the Circuit Court of the United States for the Middle District of Alabama, clearly recognized the fact that neither the act to regulate commerce nor any statute of the United States could compel connecting lines to abandon full control of their *separate* properties, or to unite in a joint tar-

iff; and that merely giving a through bill of lading, for the convenience of consignor and consignee, did not, without more, constitute a joint tariff or through rate. He said:

"The evidence shows that in cases of transportation of property from Northwestern points (such as St. Louis, Cincinnati or Louisville) to Troy, Alabama, the shipments come to Montgomery, and from there to Troy; that the rate is so much from such shipping points to Montgomery; that the Alabama Midland Railway charges what is called the local rate from Montgomery to Troy; and this is complained of. The Troy parties claim that they shall not only have the advantage of the reduced rates between the shipping points and Montgomery, but that they are entitled to such reduced rates from Montgomery to Troy. The same thing is claimed on cotton shipped from Troy to New Orleans *via* Montgomery, which is a combination of a *through* rate to New Orleans from Montgomery *plus* the local rate from Troy to Montgomery.

"The evidence shows that such a rate would be absolutely ruinous to the Midland; that it would not pay operating expenses; and, *besides, there is no section of the law under which such contention can be maintained.*

"Again, in this connection, and by way of illustration, it may be asked by what right, or by what rule, shall a common carrier, whose duty it is to serve the public impartially, be required to carry the goods shipped by a Cincinnati merchant, *via* Montgomery, to his customer at Troy, Alabama, for a less rate than is charged upon goods of the same class shipped by a Montgomery merchant to his customer at Troy,

Alabama? And does not the contention here that Troy parties are entitled to the same rates per ton per mile from Montgomery to Troy that they get from the shipping points in the Northwest to Montgomery invoke a violation of the spirit, if not the letter, of the law itself, and show that such contention cannot be sustained?

"There is a suggestion, however, because the transportation is under a common control or arrangement for a continuous carriage or shipment and under a through bill of lading, this operates, under the act, upon the rates that the roads participating in the carriage shall charge. *Such a view as that cannot be maintained under any section of the act.* By the first section of the act, it (the act) is made applicable to cases where the transportation is under a common control or management, a point which has not and could not be questioned; but that such clause eliminates from the 4th section of the act the words 'under substantially similar circumstances and conditions,' can not and is not contended.

"In any aspect of the case it seems impossible to consider this complaint of the Board of Trade of Troy against the defendant railroad companies, particularly the Midland and Georgia Central railroads, in the matter of the charge upon property transported on their roads to or from points east or west of Troy, as specified and complained of, as obnoxious to the 4th, or any other section, of the Interstate Commerce Act. The conditions are not substantially the same and the circumstances are dissimilar, so that the case is not within the statute."

It is pertinent to ask:

If all of the above lines are to be enjoined from charging a higher rate to Troy than to Montgomery how are the roads which carry goods from Montgomery to Troy to be paid for their service ?

The roads coming into Montgomery from the Northwest and Northeast will decline to join in making through rates to Troy if they are to be forced to pay for carrying the goods from Montgomery to Troy: and the roads operating between Montgomery and Troy will refuse to carry the goods unless they, too, are paid something for their services; and there is no provision of law which can compel them to join in making any such through rates.

On this subject the Supreme Court of the United States in *Stone v. Farmer L. & T. Co.* (116 U. S. 307-331), the Chief Justice delivering the opinion of the court, used the following language:

"This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law."

Dow v. Beidelman, 125 U. S. 680-689.

Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418-458.

Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339-344.

AS TO THE SECOND ORDER OF THE COMMISSION.

There is no evidence that any cotton has ever been shipped from Troy to New Orleans *via* Montgomery;

and, therefore, the Interstate Commerce Commission is needlessly concerning itself about a vain and useless thing—an immaterial issue ; literally, “much ado about nothing.” Cotton from Troy goes eastward to the nearest Atlantic ports, and not backwards to the Gulf. There is no reason why the Midland Railway should be required to haul cotton to Montgomery when destined to New Orleans for any less compensation than when destined to Montgomery proper. The rate, 23 cents per 100 lbs. for rail transportation on cotton, in force between Troy and Montgomery, was sanctioned by the Railroad Commission of Alabama as a fair remuneration for the distance, and is shown by the evidence to be reasonably low. No reason has attempted to be given why it should be decreased.

The people of Troy, evidently, would be perfectly satisfied if the rates to Montgomery were raised as high as Troy rates. And there can be no doubt that the Alabama Midland Railway would gladly make the Montgomery rates even higher than the Troy rates; because it needs all the revenue it can obtain to pay operating expenses, but these rates, being in existence when the Midland Railway was opened and put in operation in the year 1890, it was compelled either to accept them or surrender entirely all claim to Montgomery business.

It is impossible for the Alabama Midland Railway to increase the Montgomery rates, because of the sharp competition to that point. If it were legally in the power of the Alabama Midland Railway to refuse to take Montgomery business and to withdraw from all competition there, the consequences would be disastrous to it—a total loss of such revenue as it has here-

tofore derived and enjoyed from that source, without any corresponding benefit to the town of Troy; and, as this road has not even paid operating expenses since its organization and completion, it is manifest it can not afford to lose any of its revenues. It is the spirit—the genius of the law—to compensate every disadvantage by some counterbalance of good.

AS TO THE THIRD ORDER OF THE COMMISSION.

The Commission ordered the roads participating in the traffic involved from charging and collecting on shipments of cotton from Troy, *for export via the Atlantic seaports*, Brunswick, Savannah, Charleston, West Point and Norfolk, a higher rate to those ports than is charged and collected on such shipments from Montgomery. We submit the evidence shows that this method has been changed. The lowest combination is not now the established way of making rates for export from Montgomery, but, instead thereof, the agreed rates to each American port are used as the inland proportion of the export cotton rate, either from Montgomery or Troy.

AS TO THE FOURTH ORDER OF THE COMMISSION.

The answer is easy. The relative figures quoted are no longer the correct rates on cotton from Montgomery and Troy to Charleston and Savannah, having been increased from 40 to 45 cents at Montgomery against 47 cents per hundred pounds from Troy to the same points. As there is no question about the fact that effective competition is in operation by water from Montgomery, as we will endeavor hereafter to demonstrate, these rates, which indicate but slight differences,

cannot properly be regarded as unjust; particularly since the building of the Alabama Midland Railway as a competitive line caused a reduction in the cotton rates from Troy to Savannah of 8 cents per 100 lbs. or 40 cents per bale, leaving now only 2 cents per 100 lbs. in favor of Montgomery, when formerly there was a difference of 10 cents per 100 lbs. As heretofore explained in reference to other rates, the Alabama Midland also found the 45 cents rate established by lines not passing through Troy in operation at Montgomery, and it had no part in fixing the same.

AS TO THE FIFTH ORDER OF THE COMMISSION.

On June 10th, 1869, the Montgomery & Eufaula Railroad was opened from Montgomery to Union Springs—40 miles; and on June 15th, 1870, the Mobile & Girard Railroad was opened from Union Springs to Troy—31 miles. Those two lines, aggregating 71 miles, gave to Troy its first railroad outlet.

Persons shipping to Troy from New York, Baltimore and the Northeast paid at that time a through rate from those points to Montgomery, and also a local rate for 71 miles from Montgomery *via* Union Springs to Troy; and every person at Troy was doubtless satisfied—these rail rates being, of course, very much cheaper than the wagon rates which had previously prevailed between Troy and Montgomery.

The Alabama Midland Railway was not open for business until May 22d, 1890. Prior to that time Troy had never had as low rates as Montgomery from New York, Baltimore and the Northeast.

The following are the combined rates of rail and water lines controlling business from Eastern markets, to-wit:

	1.	2.	3.	4.	5.	6.
New York to Troy.....	1.36	1.17	1.03	.89	.74	.61
New York to Montgomery.....	1.14	.98	.86	.73	.60	.49
Montgomery lower than Troy.....	.22	.19	.17	.16	.14	.12
Authorized by the State Com- mission, Montgomery to Troy..	.42	.39	.35	.32	.26	.21

While it is true that the Alabama Midland Railway carries Eastern goods through Troy to reach Montgomery, the Central Railroad does not go through Troy to Montgomery; neither do the lines of the Richmond & Danville, nor the East Tennessee, Virginia & Georgia Railroads go through West Point; but all of them transport New York and Montgomery business. When the Alabama Midland Railway was completed to Montgomery, it was confronted by these rates, which were in effect by lines which did not reach Montgomery *via* Troy.

The local rate of the Alabama Midland Railway on first-class freight from Montgomery to Troy, as approved by the Railroad Commission of Alabama, is 42 cents per 100 lbs. The through rate on first-class freight (sea and rail) from New York to Montgomery is \$1.14 per 100 lbs. The combination of said local and through rates would make a total rate of \$1.56 per 100 lbs. from New York to Troy. The rate actually charged by the Alabama Midland Railway and its connections from New York to Troy is only \$1.36 per 100 lbs., or 20 cents per 100 lbs. less than the combination rate which Troy paid before the Alabama Midland Railway was opened.

The people of Troy now say that they are dissatisfied with their rates. This dissatisfaction arises not so much from the fact that the rates to Troy are too high,

but that the rates to Montgomery, in their opinion, are too low.

Shall these struggling railroads be forced to increase rates at Montgomery, Columbus and Eufaula, or accept the alternative of reducing rates to intermediate points which have not their natural advantages, thereby depleting their already meagre revenues? Can it be contended that the competition at Montgomery, Columbus and Eufaula is imaginary? The best refutation of such an assertion or assumption would seem to be the fact that for years past the present adjustment of comparative rates has existed, in the face of the unpalatable truth that the earnings of the Alabama Midland Railway, the Montgomery and Eufaula Railroad and the Mobile and Girard Railroad, respectively, are not adequate to pay operating expenses, to say nothing of dividends.

The mileage of the Alabama Midland Railway is, in round numbers, 208 miles, including the Luverne Branch, and both parts of the road in Alabama and Georgia. The cost of its construction was about \$18,000 per mile. The gross earnings of the Alabama Midland Railway for the fiscal year from July, 1892, to July, 1893, inclusive, were \$484,818.66. Operating expenses for the same period were \$568,362.34, leaving a large deficit. (See testimony of Bradford Dunham, page 272 of the Transcript of Record.) The evidence shows that the Alabama Midland Railway has been managed economically, skillfully and honestly. A corps of agents, at all important points, have been employed to solicit and secure traffic for the road, and diligent methods adopted to procure a fair proportion of competitive business. During the fiscal year from

the 30th of June, 1892, to July 1st, 1893, the amount of revenue derived from the non-competitive freight traffic of the Alabama Midland Railway was \$174,588.43, and during the same period the revenue derived from the competitive freight traffic was \$152,862.33. (See testimony of Lee McLendon, Transcript of Record, page 352.)

It is apparent, therefore, that to compel the Alabama Midland Railway Company, in order to retain its Montgomery business, to reduce its Troy rates, so as to have them not higher than Montgomery rates, would be tantamount to forcing this railway to retire altogether from the field of competition for Montgomery business, for the simple reason that, as this road is not earning even operating expenses, it is in no condition to reduce either local or competitive rates. To save it from bankruptcy and ruin it needs every dollar it can secure from every available and legitimate source.

AS TO THE SIXTH ORDER OF THE COMMISSION.

The argument against this order is practically the same as previously made.

The phosphate rock rates are controlled by the rates on fertilizers, being the same as on fertilizers to Montgomery and something less than on fertilizers to Troy. The rates to both Montgomery and Troy are quite low in themselves; the Montgomery rate being made as low as \$3.00 on account of the very much lower rate on fertilizers from Pensacola to Montgomery—\$1.80 per ton.

It can not reasonably be claimed that 22 cents per ton (which is the excess of the Troy over the Montgomery rate) is an unjust discrimination when the

local from Montgomery to Troy is considered. The Alabama Midland Railway had nothing to do with fixing this \$3.00 rate per ton on fertilizers—the same having been established by lines participating therein, which did not pass through Troy *en route* to Montgomery, and the Midland Railway, therefore, had no other alternative than to adopt the same rate, or else determine not to share in the business at all; and not to share in the business could not possibly have helped Troy. The present difference of 22 cents per ton amounts to a trifle over one cent per hundred pounds. Before the completion of the Alabama Midland Railway to Troy the rate on Phosphate rock from

Charleston, S. C., was \$4.60 per ton.

The rate now is - - 3.22 per ton.

Reduction, - - - 1.38 per ton, or 30 per cent.

These defendants, therefore, think they are justified in denying that the Central Railroad of Georgia and the Alabama Midland Railway, and their connections, unjustly discriminate against Troy in favor of Montgomery on the rates charged and collected on phosphate rock from the South Carolina and Florida fields, the rate to Montgomery being \$3.00 per ton and to Troy \$3.22 per ton; or that the said greater rate to Troy than to Montgomery over the Midland Railway is in violation of the long and short haul clause of the Act to regulate commerce. The prohibition is limited to cases in which *the circumstances and conditions are substantially similar*. On the contrary, it is insisted that *the circumstances and conditions at Montgomery are totally dissimilar from those which exist at Troy*; that Montgomery is situated on a navigable river, is the

terminus of the Montgomery & Eufaula Railroad, the Alabama Midland Railway and the S., A. & M. road, and is located on the lines of the Louisville & Nashville Railroad and the Western Railway of Alabama, and is thus afforded many outlets; that foreign ports, as well as the Northern and Eastern markets of the United States, are reached by New Orleans, Mobile, Pensacola, Jacksonville, Brunswick, Savannah, Charleston, West Point and Norfolk; and the rail lines running to these several Eastern points necessarily compete fiercely with the water lines in order to secure a portion of Montgomery's business; that the rates to and from Montgomery to these South Atlantic and Gulf seaports are lower by water and can not be controlled by the rail lines running into Montgomery; that Montgomery and the surrounding country (Troy included), both producers and consumers, are benefitted by the competition at Montgomery as to all commodities, phosphate rock included; that the rates to and from Troy and other localities, *in essential respects similarly situated*, have been lowered by reason of this competition, and are themselves relatively fair and reasonable.

In short, these said railway companies undertake to defend the existing rates.

We must be pardoned for earnestly insisting, in this connection, that the earning capacity of these railways enter very seriously into the consideration of the questions under discussion. And we invite the attention of this Court to the Annual Report (1893) of the Interstate Commerce Commission, page 163. Under the head of "Reasonable Rates," the Commission say:

"In passing upon the reasonableness of rates, the

question whether they afford the carrier a proper return for the service rendered is to be considered, as well as the result of the business to the shipper or producer of traffic."

It may not be amiss, while on this subject, also to invite the attention of this Honorable Court to a few admirable extracts taken from the Second Annual Report of the Interstate Commerce Commission, published in 1886, page 19, in which this language is used :

"If it is important to the public that a railroad once constructed should be maintained, the ability to make charges that will render its maintenance possible is also of public importance. When, therefore, the rate sheets are such that reasonable returns are not probable, a public injury is threatened, and the injury is accomplished when the natural result of bankruptcy is realized. It is of little importance that in the meantime the public reap an apparent benefit from the very low rates. The apparent benefit is almost always illusory, for the unmunerative rate sheets are seldom evenly balanced."

Again, on page 23 of the same report, they say :

"Very low rates may possibly be injurious to the public interest, even when they are relatively just and steadily maintained. This may be so, irrespective of the fact that it is always for the interest of the country that the capital invested in any great and necessary industry should be reasonably remunerative. Independent of any returns to stockholders, it is important that rates be remunerative, because of the effect that insufficient revenue may have upon the service performed for the public.

"No State, in the exercise of its controlling authority,

would ever deliberately prescribe for a railroad company a tariff of charges which would fall below a reasonable compensation for the service performed. Abundant reasons for so abstaining would be found in the fact that it would not be for the interest of the citizen that it should be so. The people want good railroad service and they ought to have it at fair rates, but to give them this, it is necessary that the road should be kept in good condition and well equipped; that the trains be sufficiently manned and well handled; that competent servants be employed and fairly paid, and that the new company avail itself of new appliances which are calculated to make the service more speedy, convenient and safe.

"But good service and low rates are antagonistic ideas; if the latter be insisted upon the former is not to be expected. Many times, in railroad history, it has been found, on inquiry into the cause of some great railroad calamity, that it was due to the fact that some railroad bridge had become weak, some tunnel insufficiently guarded, some machinery defective, or some employe incompetent or wanting in vigilance because of overwork. If the road was prosperous the management would thus be shown to be inexcusable, perhaps criminal; but if the road was not prosperous and for some reason the management had been forced to make such rates that would not give the necessary revenue for a safer service the blame for such a calamity may be fairly subject to apportionment. The public can never be in the wrong in demanding good service when fair rates are conceded; and an enlightened public sentiment will never object to fair rates when it is understood that good service is conditional upon them."

LOWER RATES.

It must be borne constantly in mind, too, that before the Alabama Midland Railway was completed to Troy, the rates to Troy were higher than they are now. To recapitulate. The completion of the Alabama Midland R'y reduced the Eastern rates, as the table below shows:

NEW YORK RATES TO TROY PRIOR TO OPENING OF ALABAMA MIDLAND ROAD.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
1.74	1.47	1.27	1.05	.80	.69	.53	.70	.59	.54	.90	1.00	1.16

RATES AT PRESENT.

1.36	1.17	1.03	.89	.74	.61	.48	.58	.47	.45	.70	.82	.92
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REDUCTION OF RATES.

.38	.30	.24	.16	.06	.08	.05	.12	.12	.09	.20	.18	.24
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RATES ON COTTON TO SAVANNAH.

Prior to Ala. Mid. R'y.	-	-	-	-	-	-	-	-	-	-	-	55 cents per 100 lbs.
At present	-	-	-	-	-	-	-	-	-	-	-	47 cents per 100 lbs.
Reduction,	-	-	-	-	-	-	-	-	-	-	-	08 cents per 100 lbs.
Or 40 cents per bale.												

The tariff proposed in this case by the Commission, as disclosed by their orders, in view of the testimony as to the earnings of the railroads between Montgomery and Troy, is both unjust and unreasonable.

The Supreme Court of the United States in the case of *Reagan v. Farmers' Loan and Trust Company* (154 U. S. Rep., p. 410) discussing this question, held that the tariff therein proposed by the State Railroad Commission of Texas was unjust and unreasonable. Mr. Justice Brewer used this language:

"The earnings for the last three years prior to the establishment of these rates was insufficient to pay the operating expenses and the interest on the bonds. In order to make good the deficiency in interest the stockholders have put their hands in their pockets and advanced over a million of dollars. The supplies for the road have been purchased at as cheap a rate as possible. The officers and employes have been paid no more than is necessary to secure men of the skill and knowledge requisite to a suitable operation of the road. By the voluntary action of the company the rate in cents per ton per mile has decreased in ten years from 2.03 to 1.30. The actual reduction by virtue of this tariff in the receipts, during the six or eight months that it has been enforced, amounts to over \$150,000. Can it be that a tariff, which under these circumstances has worked such results to the parties whose money built this road, is other than unjust and unreasonable? Would any investment ever be made of private capital in railroad enterprises with such as the proffered results?" * * * *

"Justice demands that everyone should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others."

* * * *

"The stock has never received anything in the way of dividends; for the last three years the earnings above operating expenses have been insufficient to pay the interest on the bonded debt, and the proposed tariff, as enforced, will so diminish the earnings that they will not be able to pay one-half the interest on the bonded debt above the operating expenses. Such an

avement, so supported, will, in the absence of any satisfactory showing to the contrary, sustain a finding that the proposed tariff is unjust and unreasonable."

WATER COMPETITION.

The Interstate Commerce Commission decided in this case (but upon evidence materially different from what this Transcript of Record presents) that water competition does not exist at Montgomery of such controlling force as to warrant a lesser charge for a longer haul to that point than for a shorter haul to Troy over the same line. It is difficult to reconcile this ruling with a previous decision of the Commission in another case, No. 325, and known as "The Atlanta and West Point all-rail route from Cincinnati and other Ohio river points," reported in 5th Volume of Interstate Commerce Reports, pages 346-408, embraced in the consolidated cases of R. R. Commission of Georgia v. Clyde Steamship Co., et al., 5th I. C. C. Rep., 324. The following strong language is used: "We do not think this case comes within the ruling of the fourth section. It is conceded by the complaint, and the fact appears in evidence, that water competition exists at Montgomery by the Alabama River. Opelika, the other longer distance point, is benefited by rates lower than it would receive were it not for the influence of competition at Montgomery, and West Point is also favored thereby, though in a less degree. But the inherent defect in the complaint is that the transportation is not over the same line in the same direction to both the longer and shorter distance points. The shorter is not included within the longer distance. Traffic for Montgomery and Opelika, and even West

Point, routed by the Louisville & Nashville, one of the initial defendants, goes over a wholly different route, and as to the Cincinnati, New Orleans & Texas Pacific, another initial defendant, while the evidence is not clear upon the point, still, the length of its line leads us to believe that in handling Cincinnati traffic for Montgomery and Opelika it carries such traffic first to Birmingham and forwards to Montgomery and Opelika by connecting lines from that point. Freight from Ohio River points below Henderson may possibly go through Atlanta, but the principal point of shipment to which our attention was directed by the evidence is Cincinnati. The complaint in this case must be dismissed."

Now, what is the difference in these cases? If there is water competition at Montgomery in connection with Cincinnati business which justifies the lesser charge to Montgomery than LaGrange, Ga., although the Montgomery business from Cincinnati passes through LaGrange, why does not the same water competition warrant the lower New York rates to Montgomery than to Troy? Are not the conditions of competition from New York *via* the Alabama River the same as from Cincinnati; if not, in what does the difference in conditions consist? The Commission, in the case cited *supra*, having recognized the force of water competition at Montgomery, it would seem that the proportions between Montgomery and Troy used in constructing the total rates between Ohio River points—say Louisville—being no more than the local rates established by the Railroad Commission of Alabama between Montgomery and Troy, the differences created in the competitive rates (Louisville and Montgomery and

Louisville and Troy) cannot be unjust; nor, for the same reasons, can the Troy rates be held unjustly high as compared with Columbus.

The Interstate Commerce Commission, in this case, refers to the fact that the proportion of the rate from Montgomery to Troy is from four to seven times as large per mile as that from Louisville to Montgomery. This has no significance, under the circumstances, as the proportion from Louisville to Montgomery is as high as the force of water will permit it to be; in addition to which, the Louisville & Nashville Railroad between Louisville and Montgomery is a great trunk line, not confined to the limited business of Troy or the Alabama Midland Railway, but enjoys most of the Montgomery business and carries an immense tonnage to all railway points south and east of Montgomery, in Florida, Georgia and the Carolinas; while the railroads between Montgomery and Troy are confined to a comparative small movement of tonnage, largely at low rates, on account of water competition on the coast of Georgia and Florida.

THE ALABAMA RIVER IS A POTENTIAL FACTOR, A CONTROLLING FORCE, IN REDUCING RATES TO MONTGOMERY.

A few years ago when there was considerable difference in the rates of freight between Montgomery and Mobile, the merchants of the former city put two steamers on the Alabama River, "The Jewel" and "The Alabama," and operated them actively. Large quantities of freight were shipped from the West *via* Mobile upon those boats to Montgomery, consisting of flour, grain, molasses, oats, corn, flasks, cement, whis-

kies and case goods, such as potash, salmon, starch, sardines, &c. These boats hauled many car loads. Large shipments came from Boston, New York, Philadelphia, Baltimore and other Eastern cities to Mobile, thence by the river on said boats to Montgomery, and were received at various times, consisting of coffees, sugar, potatoes, soap, syrup, bagging and ties, case goods, &c., and extending over a period of several years up to 1894, when the rates complained of were in existence. Similar shipments are now being made (but in not such large volume as then) by sailing vessels to Mobile and thence by steamers to Montgomery. At present these goods are transported mainly by sailing vessels (Benner Line) in considerable quantities, and the shipments are growing larger all the while on account of the discrepancy still existing between rail and water rates to Mobile. The Alabama River is navigable all the year round from Montgomery to Mobile, a distance of 367 miles. While the Merchant Line is not now in operation, there are three lines of steamers plying the Alabama River between these cities, and running the boats "Tinsie Moore," "Alto," "Nettie Quill" and "Carrier."

Many witnesses testify to the fact that water transportation, coupled with the further fact that said river is navigable by steamboats between Montgomery and Mobile during every month in the year, has the effect of making the rates charged by railroad lines between and to these cities lower than they otherwise would be—in short, enabling shippers to send their freight by river at low rates, and thereby keeping down the rail rates between and to these points. The immediate effect of raising rail rates to Montgomery would be the

movement of immense quantities of freight by water to Mobile; and the transfer of many goods from the West *via* the Ohio and Mississippi Rivers down to New Orleans, from there to Mobile, and thence up the Alabama River to Montgomery. It would bring freight from the East in the manner heretofore explained, and would also divert by means of river transportation a large portion of commerce from this section of Alabama to Mobile, and thence by steamer direct to European ports. The fact that there is organized water opposition to the railroads, through the medium of this river, both from the East and West, would tend to establish the fact that water transportation is of controlling force—an active and potential factor—in fixing rates to Montgomery. It hangs like the “sword of Damocles” over competing railway lines. It is a standing menace. What has been done once can easily be done again. “An ounce of prevention is worth a pound of cure.” The river serves the purpose of reducing, and keeping reduced, the rail rates to Montgomery. The Commission, in all of their decisions except the Troy case, concede that geographical position and conditions must prevail in establishing rates to jobbing cities, where they have the benefit of water transportation. There are millions of dollars invested as capital in this jobbing business, and, in fact, Montgomery is a jobbing and wholesale city; while Troy, confined within the narrow bounds of a few counties adjacent thereto, cannot be considered, in any sense of the word, or upon any principle of justice, a jobbing town.

(See testimony of W. F. Vandiver, p. 290 of Transcript of Record.)

THE PROOF DISCLOSES CLEARLY AND UNMISTAKABLY THAT
THE CIRCUMSTANCES AND CONDITIONS AT MONTGOM-
ARE TOTALLY DISSIMILAR FROM THOSE WHICH EXIST
AT TROY.

The words "circumstances and conditions" mean the conditions that govern railway traffic and the circumstances under which it is transported. "They comprehend all the circumstances and conditions that may justify differences in rates, such as competition with other railroads and with water routes, the volume and character of business at different points, the difference in terminal expenses, and the cost of service in each case." The words "substantially similar," inserted in the act, were intended to mean something. They impart enough latitude to the comparison to enable the courts to exercise sound discretion and common sense in passing upon cases that may arise. A reasonable and liberal interpretation of these words will enable the law to be administered fairly and justly, without interfering with the general commerce of the country.

The evidence, taken by affidavits and depositions, as well as upon interrogatories, shows that the estimated population of the city of Montgomery, within police jurisdiction, is about 40,000. The distance to the nearest coal field is not over sixty miles. There are 563 mercantile firms in said city, while the capital invested in manufacturing and industrial enterprises is \$3,000,000. The volume of business done in any given year, within the corporate limits of said city, is \$40,000,000.

The railroads centering in the city of Montgomery are South & North and the Montgomery & Mobile Railroads, constituting a part of the Louisville & Nashville

System; The Alabama Midland Railway and the Lurverne Extension, constituting a part of the Plant System; the Savannah, Americus & Montgomery Railroad; the Western Railway of Alabama; the Montgomery & Selma Road, and the Montgomery & Eufaula Railroad; the last named forming a part of the Georgia Central System. These various railroads run from a common centre north, northeast, east, southeast, south, southwest, west and northwest.

Montgomery is situated at the head of navigation of the Alabama River, reaching by water and rail transportation six Gulf and Atlantic ports.

Tonnage, as derived from the most accessible and trustworthy sources, for the year 1891-92, ending March 1st, 1892, received by various railroads at Montgomery proper, was 18,829,877 pounds. Tonnage of west and southwest freight received for this city and connections, during said year, was 647,880,688 pounds, or 21,596 car loads.

Montgomery is the capital of Alabama and the place of residence of the State officials—an historic city, visited by many thousand people every year. It has a large number of public buildings, amongst them being the State House, Federal Court Room, Post Office, Land Office, etc.

The business on the Alabama River, according to the report of the United States Engineer for the year 1891, was 52,349 bales of cotton carried by boat and 44,500 tons of freight. The value of the commerce on the Alabama River that year (1891) was \$8,175,650. Montgomery receives from 125,000 to 165,000 bales of cotton annually. It has great warehouse and compressing facilities for handling, marketing and disposing of

this crop; and its wholesale and retail trade, estimated as high as \$40,000,000 annually, as above stated, reaches into four States. It is also a great lumber distributing market—the local point of trade for a large territory. It has about 115 manufacturing establishments of various kinds, large and small, including electric light and gas works; and it manufactures beer, soap, ice, cars, fertilizers, cotton seed oil, sash and blinds, cotton seed meal, confectioneries, barrels, stoves, engines, boilers, cane mills; wagons, buggies, brooms and various other articles too numerous to particularize.

Montgomery has three cotton factories, owned and controlled by persons residing here, employing hands to the number of 1,200, and consuming cotton to the amount of 18,000 bales; besides, has 41 manufacturing and industrial enterprises of various kinds, employing total number of 2,700 hands.

The cotton received for the year 1891 amounted to 165,000 bales, while the cotton compressed for said year was 156,324 bales.

There are 21 wholesale firms who buy from the west, and 11 wholesale firms who buy from the east. Montgomery is entitled to the trade of and reaches points in Southwest Georgia, Florida, Central and South Alabama and West Mississippi.

Troy is an inland town, fifty-two miles southeast of Montgomery and eighty-five miles slightly southwest of Columbus, Georgia. The population of Troy does not exceed 4,000; the cotton receipts at that point on an average are about 30,000 bales annually; while the volume of trade for any given year does not amount to more than three million dollars. She has only two railroads, The Alabama Midland and the

Mobile & Girard. The differences existing between the circumstances and conditions affecting traffic to and from Montgomery and to and from Troy are, that Montgomery has six or seven competing railroads and a navigable river, and Troy has no water way and only two railroads. The mere statement of these facts would seem to be a convincing argument to demonstrate that *the circumstances and conditions of Montgomery and Troy* as to transportation facilities are totally dissimilar.

THE PROOF ALSO SHOWS THAT THE CIRCUMSTANCES AND CONDITIONS AT COLUMBUS ARE DISSIMILAR IN MANY IMPORTANT PARTICULARS FROM THOSE WHICH EXIST AT TROY.

There are three steamers running between Columbus, Eufaula and Apalachicola. Their names and tonnage are; "Flint," with a tonnage of 135.57 tons; "Maid," with a tonnage capacity of about 130 tons; and "Bay City," with a tonnage capacity of about 100 tons. The average time required for a boat to go from Columbus to Apalachicola and return is about five days, and from Eufaula and return is about four days.

The difference existing between the circumstances and conditions affecting the transportation of traffic to and from Columbus and those affecting Troy are as follows: Columbus being situated on a navigable river naturally has the advantage over Troy in the way of rates. Troy, being an inland city and about 90 miles from the river, can be reached by rail only.

The following are the routes of transportation between Columbus and the Atlantic seaboard, and also Northern and Eastern cities, viz.: The Central Rail-

road, the Columbus Southern Railroad and the Georgia Midland & Gulf Railroad. There are four steamboat lines from Columbus to the Gulf of Mexico, viz.: The Central Line, People's Line, Columbus & Gulf Navigation Co. and the Merchants' & Planters' Line. The Mobile & Girard Railroad (a part of the Central System) also has connections with the Gulf.

The Chattahoochee River is navigable between Columbus, Eufaula and Apalachicola for six months or more in the year by ordinary river steamboats; and during the summer months it is navigable by small boats and steamers.

The following are competing lines of transportation at Columbus: The all-rail lines—the Central, the Georgia Midland and the Columbus Southern; the all-water lines—the Central Line, the People's Line, Merchants' & Planters' Line and the Columbus & Gulf Navigation Co. These are six railroads that connect with this water route.

The following are transportation routes from Columbus to the Gulf of Mexico: Chattahoochee River, the Central Railroad, Savannah, Americus & Montgomery Railway, the Alabama Midland, and Pensacola & Atlantic Railroad, in addition to the water route above mentioned.

The population of Columbus is more than 20,000 and it is a large manufacturing centre.

IT IS INSISTED THAT THE PROOF SHOWS THAT THE CIRCUMSTANCES AND CONDITIONS AT EUFAULA ARE MATERIALLY DISSIMILAR FROM THOSE WHICH EXIST AT TROY.

The difference between the circumstances and conditions affecting the transportation of traffic to and from

Eufaula and those to and from Troy is as follows: Eufaula is located upon a navigable river, while Troy is situated on no river at all. If there were no railroads to Eufaula she could get all of the goods that come to her by river and could ship every bale of cotton or goods by water, while Troy, without railroads, would have to transport hers by wagons either to Montgomery, Columbus or Eufaula before she could make shipments. The following railroads enter Eufaula: South Western Railroad, connecting at Macon, Georgia, with different systems; the Montgomery & Eufaula connecting at Montgomery with different systems; and the Eufaula & Ozark, connecting with the Alabama Midland Railway at Ozark. Troy has only the following railroads, as has already been shown, to-wit: The Mobile & Girard and the Alabama Midland. In addition to the railroads entering Eufaula, the Savannah, Americus & Montgomery Railroad comes within 18 miles and is accessible by wagon roads, passable all the year round; the Abbeville Southern Railway, a part of the Plant System, is only 25 miles from Eufaula, and is also accessible by wagon roads, passable all the year round. And in addition to the river connections above mentioned with the Alabama Midland and the Plant System, she has river connections also with the Florida Central & Peninsular, the Louisville & Nashville and the Columbus Southern roads. It is claimed, therefore, that if Eufaula had no railroads running into the city she would have ample and competitive communication with outside railroads through and by means of her river route, to-wit: The navigable Chattahoochee and Apalachicola Rivers, which open up to Eufaula three independent railroad systems. Eufaula is naturally a

strong competitive point, while Troy is an inland town having no facilities for an outlet except by rail.

There is one line of rail transportation from Eufaula to the Atlantic seaboard, the Central Railroad, running to all points on the Atlantic coast; and also the river line of transportation to Savannah, Brunswick and Fernandina.

The population of Eufaula is about 6,000.

The following are the manufactories at Eufaula, viz.: Eufaula Cotton Mills, Chewalla Cotton Mills, Eufaula Oil Mills, sash, door and blind factory, two carriage manufactories, gas works, electric light works—all together having about 600 or 700 employees.

UNDER THE PLEADINGS AND ISSUES IN THIS CASE THE
COMPLAINANTS OUGHT NOT TO OBTAIN THE RELIEF
THEY SEEK. TO GRANT IT WOULD NECESSITATE
AN ENTIRE REVISION OF RATES.

The Alabama Midland Railway runs in a southeast direction *via* Troy, Ozark and Dothan to Bainbridge, Ga., a distance of 175 miles, crossing the Chattahoochee River at River Station, now called Alaga, 32 miles west of Bainbridge. It has a branch road, known as the Luverne Extension, deflecting at Sprague Junction, 19 miles south of Montgomery and extending to Luverne, 51 miles due south from Montgomery.

Ozark is 92 miles southeast of Montgomery, 40 miles beyond Troy, and is at the point of intersection of the Alabama Midland Railway and the Savannah and Western Railroad, a part of the Georgia Central System. It has a population of about 3,000, and is in all essential respects as much a competitive point as the town of Troy, is similarly situated and has a territory naturally tributary and equally as large as belongs to Troy.

Dothan is 28 miles from Ozark, 68 miles from Troy, and 120 miles from Montgomery; is, moreover, in close proximity to the Chattahoochee River, has a population of about 4,000, and is the central point of trade or mart for a territory extending into the States of Georgia and Florida.

The Mobile & Girard Railroad, a part of the Georgia Central System, extends from Columbus, Ga., *via* Union Springs, where it crosses the M. & E. R. R.; thence to Brantley, which is about 12 miles on a straight line South of Luverne (the terminus of the Luverne Extension), and thence on to Searight, the Southwestern terminus of the said M. & G. Railroad. Union Springs is 56 miles South of Columbus; Troy 29 miles from Union Springs and 85 miles from Columbus; Brantley is 26 miles from Troy, 35 miles from Union Springs and 111 miles from Columbus. The proof shows (see affidavit of Mr. Talbot) that Brantley is a flourishing new town and has a population of 700 or 800 people.

The strongest contention of the Board of Trade of Troy is that in the shipment of goods, particularly from the Western markets, St. Louis, for instance, through rates are charged to Montgomery and local rates are added from that point to Troy; and that in consequence of these through rates it costs more to ship from Troy, for instance, to Ozark, a distance of 40 miles, than from Montgomery to Ozark, a distance of 92 miles, the longer shipment from the West *via* Montgomery going by or through Troy and the shorter shipment starting at Troy. The same complaint is made as to the long haul rate *via* Columbus to Brantley. It is not contended that shipments of goods originating at either Colum-

bus, Ga., or Montgomery, Ala., respectively, would not reach Troy at a less rate of freight than like shipments would go to Brantley or Ozark, respectively. The through rate from Troy to any Western market, as above shown, is made up by adding the local rate from Troy to Montgomery to the through rate from Montgomery to the West; and this is true, also, as to Ozark, Dothan, Brantley and other points on the lines of these two roads *in all essential respects similarly situated*. To make concessions to Troy in the matter of rates would, manifestly, be unfair to these neighboring towns similarly situated. An examination of the evidence taken in this case will demonstrate, we think, that the alleged greater rate to Troy than to Montgomery is not charged under similar circumstances and conditions; but even if true, it is clear that Ozark and Dothan, on the Alabama Midland Railway, and Brantley, on the Mobile & Girard Railroad, as well as other points on both lines of road, similarly situated as Troy, would be injuriously affected by such a change of rates as the Board of Trade of Troy ask in their own behalf, and would necessitate an entire revision of rates, without having given these other places, above named, an opportunity to be heard.

It would require a reconstruction of rates to all of these towns similarly situated; or else be tantamount to holding that the circumstances and conditions prevailing in the town of Troy are such as to justify making it an exception, under the 4th section of the Act to regulate commerce, as against the local or neighboring stations about it. The proof, we insist, does not show that the circumstances and conditions existing in Troy are so exceptional as to require a revision of rates in

its favor, which would not apply with equal force to other towns similarly situated on the lines of the Alabama Midland and Mobile & Girard Railroads. A change of rates in favor of Troy would materially affect these other towns. The petition in this case does not contain any allegations which would warrant the Commission to grant an entire revision of rates, and "the points to be affected by such an order are not, and were not, before the Commission and have had no opportunity to be heard." No facts have been proven on which the town of Troy can reasonably or fairly predicate a claim for lower rates proportionately than are given to Ozark, Dothan, Brantley, and other points on the line of the Midland and Mobile & Girard roads similarly situated.

Harwell v. Columbus & Western R. R. Co., et al., Interstate Com. Rep., Vol. 1, pp. 250-51.

We repeat, that if Troy is entitled to Montgomery rates, so is every other local station on the Alabama Midland Railway; and if all of the local stations are entitled to competition rates on west-bound business they are also entitled to them on east-bound business; and the Commission has virtually so decided in this case. The effect of the decision, without any allegation to uphold it, is to reduce all local rates, whether west-bound or east-bound, to the proportions received by said railway from competitive rates; and such a sweeping reduction of rates would render it impossible for the road to earn enough to keep it in safe condition. It would follow, therefore, that as the road would lose less revenue from the abandonment of the competitive business than it would by reducing its local rates, it would necessarily abandon the competitive, and hold fast to the local traffic.

Again, the Commission gives as one reason for adopting the Columbus rate for Troy, the fact that the present combination on Columbus to said town of Brantley is less than combinations on Troy; but, in this connection, it is proper to ask what becomes of the respective rights of Brantley and the twenty-nine other towns on the Mobile & Girard Railroad, the fifteen on the Montgomery & Eufaula Railroad and the thirty-seven on the Alabama Midland Railway? If it is sought to grant Troy such rates as will enable the merchants of that town to resell to other points, and then attempt to put the other points on a parity with Troy, manifestly such action will neutralize the advantage of one point over another to such an extent as to prevent the reselling of any of the western commodities between the Alabama towns situated on the railroads adjacent to Troy; and if so, what is to become of the revenues of these railways? There is no question, but if this policy is insisted upon by the Commission and is sanctioned by the courts, it will not only so deplete the earnings of these railways as to destroy their value to their owners, but their efficiency as well to the general public. It will result, necessarily, that there will be no interchange of business between these points in Georgia and Alabama. Therefore, no benefit can accrue to them, but the business, which some of them now control, will be taken away, without helping others, to the bankruptcy and ruin of these transportation lines.

Reagan v. Farmers' Loan & Trust Co., 154 U. S. 410, *supra*.

Respectfully submitted,

A. A. WILEY,

*Attorney for the Alabama Midland Railway Company
and
The Savannah, Florida & Western Railway Company.*

N^o. 563. 203.

Supplement to Br. of Baxter
Filed Mar. 16, 1897.
Appell
Supreme Court of the United States.

OCTOBER TERM, 1896

No. 563.

Office Supreme Court, U. S.

FILED.

MAR 16 1897

JAMES H. McKENNEY,

CLERK

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

THE ALABAMA MIDLAND RAILWAY COM-
PANY *et al.*

Appeal from the United States Circuit Court of
Appeals for the Fifth Circuit.

Supplemental to the Brief of Ed. Baxter, of
Counsel for Defendant.

Extracts from Reports of Alabama Midland Railways," Published by the

Stock Outstanding.	Bonds Outstanding.	Total Earnings and Income.
4,125,000 (a)	3,300,000 (b)	126,262 (c)
4,225,000 (e)	3,300,000 (f)	512,136 (g)
4,225,000 (i)	3,300,000 (j)	514,950 (k)
4,225,000 (m)	3,300,000 (n)	490,768 (o)
4,225,000 (q)	3,300,000 (r)	547,955 (s)
4,225,000 (u)	3,300,000 (v)	535,975 (w)

* Went into Plan

See "Statistic

(a) 1890, p. 366	(e) 1891, p. 280	(i) 1892, p. 258
(b) 1890, p. 367	(f) 1891, p. 281	(j) 1892, p. 259
(c) 1890, p. 504	(g) 1891, p. 374	(k) 1892, p. 352
(d) 1890, p. 561	(h) 1891, p. 413	(l) 1892, p. 380

**way Company as taken from "Statistics of
State Commerce Commission.**

Total Operating Expenses.	Suplus.	Deficit.	For Year Ending June 30.
38,107 (<i>d</i>)	.....	11,845	1890
36,217 (<i>h</i>)	75,919	.....	1891
66,847 (<i>l</i>)	.....	78,897	1892
12,861 (<i>p</i>)	.....	52,093	1893
3,232 (<i>t</i>)	44,723	.... ..	1894
10,823 (<i>x</i>)	25,152	.....	1895

ystem this Year.

Railways."

(<i>m</i>) 1893, p. 266	(<i>q</i>) 1894, p. 304	(<i>u</i>) 1895, p. 324
(<i>n</i>) 1893, p. 267	(<i>r</i>) 1894, p. 305	(<i>v</i>) 1895, p. 325
(<i>o</i>) 1893, p. 362	(<i>s</i>) 1894, p. 409	(<i>w</i>) 1895, p. 431
(<i>p</i>) 1893, p. 390	(<i>t</i>) 1894, p. 440	(<i>x</i>) 1895, p. 460

"This Court would seem entitled to examine the Statistics, because, by incorporation in an official report, they have become matters of public knowledge," etc.

See brief of Edward B. Whitney, Assistant Attorney General, in Interstate Commerce Commission *v.* Detroit, Grand Haven and Milwaukee Ry. Co., No. 539, Oct. Term, 1896, p. 73.

The petition in this case was filed before the Commission June 29, 1892; and the decision by the Commission was made August 15, 1893. (Trans., p. 52.)

The defendants asked witness McLendon for the earnings and expenses of the Alabama Midland Railway Company for the year during which the case was before the Commission, viz., for the fiscal year from July, 1892, to June, 1893, inclusive. (Trans., pp. 182-352.)

It will be seen that so far from this year 1892-3, being exceptional, there was a deficit three years out of six.

By deducting this total deficit from the total surplus, the net surplus for six years was only \$1,959, or \$326.50 per annum. The net surplus for said six years would not pay $\frac{1}{10}$ of 1 per cent. on the bonded debt of \$3,300,000, to say nothing of \$4,225,000 of stock.

Respectfully submitted,

ED. BAXTER,
Counsel for Appellees.

INTERSTATE COMMERCE COMMISSION v. ALA-
BAMA MIDLAND RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.

No. 203. Argued March 12, 15, 16, 1897. — Decided November 8, 1897.

Cincinnati, New Orleans & Texas Pacific Railway v. Interstate Commerce Commission, 162 U. S. 184, and *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Railway Company*, 167 U. S. 479, adhered to, to the points that Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates, either maximum, or minimum, or absolute; and that, as it did not give the express power to the Commission, it did not intend to secure the same result indirectly by empowering that tribunal, after having determined what, in reference to the past, were reasonable and just rates, to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just.

Competition is one of the most obvious and effective circumstances that make the conditions, under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contempla-

Syllabus.

tion of Congress in the passage of the act to regulate commerce. This is no longer an open question in this court.

The conclusion which the court reached in *Interstate Commerce Commission v. Baltimore & Ohio Railroad*, 145 U. S. 263, and *Wight v. United States*, 167 U. S. 512, that in applying the provisions of §§ 3, 4 of the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, making it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the second section of the act.

The purpose of the second section of that act is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor, and it was held in *Wight v. United States*, 167 U. S. 512, that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.

This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for, as the purposes of the several sections are different, the phrase under consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough to include all the facts that have a legitimate bearing on the situation—among which is the fact of competition when it affects rates.

The mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraints of the third and fourth sections; but these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such, as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

The conclusions of the court on this branch of the case are: (1) that competition between rival routes is one of the matters which may lawfully be considered in making rates for interstate commerce; and (2) that substantial dissimilarity of circumstances and conditions may justify

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common carriers in charging greater compensation for the transportation of like kinds of property for a shorter than for a longer distance over the same line, in such commerce.

Whether, in particular instances, there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise, are questions of fact depending on the matters proved in each case.

The Circuit Court had jurisdiction to review the finding of the Interstate Commerce Commission on these questions of fact, giving effect to those findings as *prima facie* evidence of the matters therein stated; and this court is not convinced that the courts below erred in their estimate of the evidence, and perceives no error in the principles of law on which they proceeded in its application.

On the 27th day of June, 1892, the Board of Trade of Troy, Alabama, filed a complaint before the Interstate Commerce Commission at Washington, D. C., against the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections, claiming that in the rates charged for transportation of property by the railroad companies mentioned and their connecting lines there was a discrimination against the town of Troy, in violation of the terms and provisions of the Interstate Commerce Act of Congress of 1887.

The general ground of complaint was, that Troy being in active competition for business with Montgomery, the defendant lines of railway unjustly discriminated in their rates against the former, and gave the latter an undue preference or advantage in respect to certain commodities and classes of traffic. The specific charges insisted on at the hearing, and to which the testimony related, were:

1. That the Alabama Midland Railway and the defendant roads forming lines with it from Baltimore, New York and the East to Troy and Montgomery charged and collected a higher rate of shipments of class goods from those cities to Troy than on such shipments *through Troy* to Montgomery; the latter being the longer distance point by fifty-two miles.
2. That the Alabama Midland Railway and Georgia Central Railroad and their connections unjustly discriminated against Troy and in favor of Montgomery in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped

Statement of the Case.

from the South Carolina and Florida fields and only \$3.00 per ton on such shipments to Montgomery, the longer distance point by both of said roads; and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland had to be hauled through Troy.

3. That the rates on cotton, as established by said two roads and their connections, on shipments to the Atlantic seaports, Brunswick, Savannah and Charleston, unjustly discriminated against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy is forty-seven cents, and that from Montgomery, the longer distance point, is only forty cents, and that such shipments from Montgomery over the road of the Alabama Midland had to pass through Troy.

4. That on shipments for export from Montgomery and other points, within the so called "jurisdiction" of the Southern Railway and Steamship Association to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a lower rate was charged than the regular published tariff rate to such seaports, and that Montgomery and such other points were allowed by the rules of said association to ship through to Liverpool via any of these seaports at the lowest through rates on the day of shipment, which might be less than the sum of the regular published rail rate and the ocean rate via the port of shipment; that this reduction was taken from the published tariff rail rate to the port of shipment; that, this privilege being denied to Troy, was an unjust discrimination against that town in favor of Montgomery and such other favored cities, and that it was also a discrimination against shipments which terminate at such seaports in favor of shipments for export.

5. That Troy was unjustly discriminated against in being charged on shipments of cotton via Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and Georgia Central.

6. That the rates on "class" goods from Western and Northwestern points, established by the defendants forming lines from those points to Troy, were relatively unjust and dis-

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criminary as against Troy when compared with the rates over such lines to Montgomery and Columbus.

The Commission, having heard this complaint on the evidence theretofore taken, ordered, on the 15th day of August, 1893, the roads participating in the traffic involved in this case "to cease and desist" from charging, demanding, collecting or receiving any greater compensation in the aggregate for services rendered in such transportation than is specified, as follows, to wit:

1. On class goods shipped from Louisville, Kentucky; Saint Louis, Missouri, or Cincinnati, Ohio, to Troy aforesaid, no higher rate of charge than is now charged and collected on such shipments to Columbus, Georgia, and Eufaula, Alabama.

2. On shipments of cotton from Troy aforesaid through Montgomery, Alabama, to New Orleans, Louisiana, no higher rate of charge than fifty cents per hundred pounds.

3. On shipments of cotton from Troy aforesaid for export through the Atlantic seaports, to wit, Brunswick, Savannah, Charleston, West Point or Norfolk, no higher rate of charge to these ports than is charged and collected on such shipments from Montgomery aforesaid.

4. On shipments of cotton from Troy aforesaid to the ports of Brunswick, Savannah or Charleston, no higher rate of charge than is charged and collected on such shipments from Montgomery aforesaid through Troy to said ports.

5. On shipments of class goods from New York, Baltimore or other Northeastern points to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

6. On shipments of phosphate rock from South Carolina and Florida fields to Troy aforesaid, no higher rate of charge than is charged and collected on such shipments through Troy to Montgomery aforesaid.

The defendants having failed to heed these orders, the Commission thereupon filed this bill of complaint in the Circuit Court of the United States for the Middle District of Alabama, in equity, to compel obedience to the same. On the hearing in said court the bill of complaint was dismissed, and

Argument for Appellant.

complainant, the Interstate Commerce Commission, appealed the cause to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, at New Orleans, Louisiana. And, thereupon, in said last-named court, on the 2d day of June, 1896, the decree of the said Circuit Court of the United States for the Middle District of Alabama was in all things duly affirmed; and from this judgment and decree the appellant appealed to this court.

Mr. L. A. Shaver and *Mr. Assistant Attorney General Whitney* for appellant.

Mr. George F. Edmunds, on behalf of the appellant, on the question of the jurisdictional power of the Interstate Commerce Commission to make the order it did in this case, that the charge exacted by the carriers in respect of the particular goods in question should not exceed a certain named sum which the Commission, upon complaint, answers, issues, proofs and hearing, found to be reasonable and just, filed the following brief.

I. It is submitted with respectful confidence that the interstate commerce law is in all its civil aspects a remedial one.

At the time of its passage the railway carriers were the absolute and irresponsible masters of all interstate commerce. The several States, in trying to break up, or at least to mitigate, the unjust tyranny of these great corporations and combinations that held the largest part of the intercourse of the people in their grasp (and which in many instances undertook to control political as well as commercial affairs), found themselves baffled, and practically defeated in their efforts by the national constitutional provision that only Congress could regulate interstate commerce. In this state of affairs, and to redress such enormous grievances, the Interstate Commerce Act was passed for the intended benefit of the whole body of the citizens of the Republic having a common grievance and a common interest in the vast commercial intercourse between all the States. This legislation was, therefore, in the very highest sense, and to the last degree, remedial.

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II. Being thus remedial, the statute ought to be construed liberally to the attainment of the ends in view. Instead of being given the narrowest possible application and construction, it should, it is humbly submitted, be applied and construed by the judiciary in the largest latitude fairly consistent with its language. It ought not to be frittered away by the refinements of criticism, or made ineffectual because it does not possess all the inclusive and exclusive qualities of a plea in abatement, and may not be "certain to a certain intent in every particular." It is, perhaps, questionable taste for the bar to cite authority for this proposition, but it may be permitted to refer to a few of the vast number of the authorities on the subject. *Wilkinson v. Leland*, 2 Pet. 627; *Silver v. Ladd*, 7 Wall. 219; *Beaston v. Farmers' Bank*, 12 Pet. 102; *United States v. Bank of North Carolina*, 6 Pet. 29; *Bank of United States v. Lee*, 13 Pet. 107; Broom's Legal Maxims, 5th Am. ed. (3d London ed.) 80.

III. But the contention on the other side is that, while the Commission has power to decide what shall not be done, it has no power in the very same case to do complete justice by declaring what shall be done by the carriers in the given matter. We may well quote here the language of Broom's Legal Maxims: "Again, in construing an act of Parliament, it is a settled rule of construction that cases out of the letter of the statute, yet within the same mischief or cause of the making, thereafter shall be within the remedy thereby provided; and, accordingly, it is laid down that for the sure and true interpretation of all statutes (be they penal or beneficial, restrictive or enlarging of the common law) four things must be considered: (1st) What was the common law before the making of the act; (2d) What was the mischief for which the common law did not provide; (3d) What remedy has been appointed by the legislature for such mischief; and (4th) The true reason of the remedy. And then the duty of the judges is to put such a construction upon the statute as shall suppress the mischief and advance the remedy—to suppress the subtle inventions and evasions for continuing the mischief *pro privato commodo*, and to add force and life to the cure and

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remedy according to the true intent of the makers of the act, *pro bono publico*. In expounding remedial laws, then, the courts will extend the remedy so far as the words will admit." It is submitted that the words of the statute in question do not require the application of the foregoing rules, — being too plain for their application. If they are not, then the rule should be applied.

IV. What, then, is the statute? At the risk of reiteration, I quote the crucial parts of some of the sections bearing on the subject of this brief. Act of February 4, 1887, c. 104, 24 Stat. 379.

"SEC. 1. . . . All charges made for any services rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

"SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, and under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue

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or unreasonable prejudice or disadvantage in any respect whatsoever. . . .

"SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than a longer distance over the same line, in the same direction. . . ."

SECS. 6 and 7 control the regulation of through rates, and provide against devices to break up continuous transportation, and for a general control of the Commission over that subject.

SEC. 9 provides that persons claiming to be damaged in respect of the matters embraced in the acts may complain to the Commission.

SEC. 11 establishes the Commission, and secures to it a non-partisan character and a freedom from private interest or bias.

"SEC. 12 [as amended by the act of March 2, 1889, c. 382, 25 Stat. 855]: That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted; and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; . . . and for the purposes of this act the Commission shall have power to require by subpœna the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation. . . ."

"SEC. 13. That any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention to the provisions thereof, may apply to said Commission by petition,

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which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. . . .

"SEC. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found. . . .

"SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both. . . .

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"SEC. 16. That whenever any common carrier as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, . . . it shall be lawful for the Commission, or for any company or person interested in such order or requirement, to apply in a summary way, by petition to the Circuit Court of the United States, sitting in equity, . . . alleging such violation or disobedience, as the case may be, and the court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; . . . and said court shall proceed to hear and determine the matter speedily as a court of equity . . . in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode, and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition. . . ."

These sections, by general, comprehensive and specific language (only short, possibly, of the inclusive and exclusive strictness and fulness required in pleas in abatement at common law), place within the jurisdictional power and duty of the Interstate Commerce Commission the investigation, hearing and determination of all questions of dispute between the public and its component citizens and localities and the carriers. There is no limitation of the clear phrases of these various sections. The duty of the carrier is set forth in all its aspects, both of affirmative duty and of prohibition. The first section requires that "all charges shall be reasonable and just." The second section prohibits special personal favoritism by secret devices. The third section prohibits preferences between persons or localities and kinds of traffic. The fourth section prohibits charging more for a shorter than for a longer distance. The twelfth section provides that the Commission shall have authority to "inquire into the management of the business of all common carriers," and that "the Commission is hereby authorized and required to execute and enforce the

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provisions of this act." There is no part of it that the statute does not expressly require the Commission to cause to be completely executed. The method of this execution is pointed out by the prescribed modes of procedure provided for in sections 13, 14, 15 and 16. And all this to be done on due application, under due procedure of notice, evidence and hearing of all the parties. How, then, can it be said by the most hypercritical refiner that the Commission has no jurisdiction to decide, for instance, what is "reasonable and just" as provided in section 1? Has the Commission only the power to repeat the words of the statute, and say to the carrier proved to be guilty of extortion, "You must desist from extortion, and be reasonable and just"? Would not that be a palpable mockery of either administrative or judicial justice?

If the statute had contained only the first and twelfth sections with the procedure sections, could this court doubt the power of the Commission to decide the matter, and require the very conduct on the part of the carrier that the Commission had found to be "reasonable and just"? To hold otherwise would be to ignore and flout the plainest possible use of language, if the statute be within the competence of Congress to pass.

But the rightful power of Congress to enact the law is not disputed. That the legislative department of any government, state or national, has power to regulate the conduct of any full or *quasi* public business, is too obvious for discussion. State legislatures, in respect of their internal commerce and polity, possess, and have always exercised, the power of controlling all such business through agents (by whatever names they may be called), to whom is deputed the execution of the sovereign will according to the principles and rules laid down by the legislative power. The innumerable instances of this need not be cited. Indeed, government could not be, and it never has been, carried on in any other way.

Again: section 2 prohibits the unjust discrimination between persons, *i.e.*, between the traffic that citizens may be engaged in, or between citizens engaged in the same traffic. The Commission is, by the proper methods of procedure, to

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"enforce" this provision. Is the power of the Commission exhausted in saying to the discriminating carrier, "You shall not discriminate," and stop there? Must it not say, if it does its duty in enforcing the act and redressing the grievances found to exist, that it will enforce the law by deciding what the nature and degree of the discrimination is, and by requiring that such degree of discrimination shall be effaced altogether by affirmative conduct of equality, or by a charge of no more than the ascertained rightful sum, to the parties aggrieved?

Without referring in detail to the other provisions of the statute above quoted, it is safe to say that the plain purpose and clear, comprehensive language of the act show that the whole and all of the duties and obligations of the carrier to its customers and toward localities, etc., are to be enforced by the Commission; not a part of them, not a half of any of them, but all and every part of all of them. It is like algebra, in which neither side of the equation can possibly be considered or worked without the other. A complaint may be filed before the Commission (as in this case) alleging that the carrier ought not to charge for a described service more than the just and reasonable sum of fifty cents the hundred pounds, while, in fact, it is exacting one dollar the hundred pounds. Suppose the carrier appears and confesses that fifty cents per hundred is a reasonable and just price and that it does exact one dollar, but insists that the Commission has no jurisdiction to require the confessed reasonable charge to be made, and that it only has jurisdiction to require the cessation of the one dollar exaction, thus leaving the carrier to continue to plunder its customers of forty-nine cents per hundred with absolute impunity, as far as the Commission is concerned, until a new complaint shall have been instituted and the forty-nine cent charge again declared to be unreasonable. That this is shocking to all our natural sense of justice no one can dispute. Why, then, should the broad, comprehensive, and specific language of the statute be "cabined, cribbed, confined" to produce such a state of the law? The citation from Broom may be well remembered in this connection.

The statute certainly requires the carrier to refrain from

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exacting more than a reasonable price (section 1); to refrain from drawbacks, rebates, etc., and all other unjust discriminations (section 2); to refrain from giving preferences or unequal advantages to persons or localities (section 3); to refrain from exacting more for a short than for a long haul (section 4); to refrain from all devices to break up continuous passage from road to road (section 7). I repeat in this connection that section 12 provides that the Commission shall have authority to "inquire into the management of the business," etc., and to obtain "full and complete information necessary to perform the duties and carry out the objects for which it was created." And I repeat the inquiry, what were the duties and objects for which it was created? The same section answers the question in terms so clear that neither cavil nor sophistry can confuse or obscure them.

V. But it is said that the Commission is not a judicial body, and cannot exercise judicial powers. Granted in the strict sense of the terms; but, in every civilized country, administrative officers have always lawfully exercised many powers, in every department of government, which are in their nature judicial; for every power which involves the exercise of judgment, opinion and decision is of that nature. Such are the powers exercised by the Secretary of the Interior as to many land questions; the Secretary of the Treasury and some of his subordinates, as to customs, etc.; the various Commissions that have existed from time to time for nearly a century to settle land claims; and many others.

That Congress had the power to establish interstate "rates" in the largest sense of the word cannot be doubted. And that it had the power to establish a Commission to do the same thing is, it is submitted, equally clear. It is assumed, for the purpose of this case, that it did neither in the sense to which I am now referring. It adopted a policy short of this, and provided clear descriptions and requirements concerning the duties of the carriers in all the aspects that touch their conduct toward their patrons and toward the localities and sections of the country; and established the Commission to execute and enforce all these provisions — not a part of them,

Argument for Appellant.

and not a part of any one of them ; not negatively merely, but affirmatively and fully, to the end that real conformity by the carrier to the requirements of the act should be obtained, and as the act declares, obtained speedily, by procedure formal and ceremonious, in which all parties in interest were to be heard ; and it provided for a decision of the particular question and the particular grievance thus brought to the attention of the Commission and examined by it ; and in case of refusal to obey, the act provided for a suit to be brought in a judicial court of "equity," which court is required "to hear and determine the matter speedily as a court of equity," with all that the phrase implies. The Commission is to inquire into "anything done or omitted to be done" by any common carrier subject to the provisions of the act in contravention to the provisions thereof ; and it authorized the Commission to require the carrier to "satisfy the complaint," or answer ; and then, after hearing, to require the carrier "to cease and desist from such violation, or to make reparation, or both." How can this be done short of a decision upon the whole matter ? To again illustrate, let it be supposed that the sole complaint was that the carrier was exacting double what was just and reasonable for a particular service, and that this, on due notice to both sides, was found to be true. This would be a palpable violation of the act. But the Commission is authorized to require the carrier to cease and desist from doing that very wrong. Does the carrier do so unless and until he reduces his exaction to the true point of justice and reason ? To hold otherwise would be, it is submitted, trifling both with grammar and common justice. If the statute had conferred the very same power, and in the very same words, upon a court of equity instead of the Commission, could the power of the court to redress the whole grievance be doubted ? But the admitted power of the Commission to command the desistance from a charge of one hundred cents per hundred pounds is no less "judicial" than a requirement not to charge more than the sum found to be reasonable and just. And the two things are precisely the same in principle and legal effect, and are inseparable.

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On the subject of "reparation" provided for in section 3, I observe again that this section is to be enforced by the Commission. How is this possibly to be done, otherwise than by commanding action by the carriers suited to the nature of the case, so as to obliterate the whole undue preference, etc., and how possibly otherwise can reparation be made to a locality? Reparation means "restoration" of the right. No such exercise of the power by the Commission is either "fixing rates" or prejudging a matter, as referred to by Mr. Justice Shiras in the Social Circle case.

VI. The words "lawful order" mean an order the Commission has jurisdiction to make. An order may be lawful and at the same time erroneous, so that if the Commission made an order in a matter over which they had jurisdiction, which was merely an error of judgment as to precisely the degree of reparation, for instance, the carrier ought to make, the order would still be lawful. In such a case the court is to "hear and determine the matter," that is, the whole subject, "as a court of equity, . . . in such manner as to do justice in the premises"; that is, complete justice in the whole premises. "Premises" is not merely the particular order that the Commission has made, but it is the whole subject that had been duly brought before the Commission and on due notice and hearing had been acted upon. It is that duty which rested with the Circuit Court and is now imposed upon this court.

All the preceding action described is not "fixing rates" in the sense that state commissioners of railways are authorized by their legislatures to establish general rates for all classes and for all railways, as is contended for by the defendants. We make no such claim. The action of the Commission, and the action of this court, on what is really an appeal from and a review of its judgment, is the trial and determination of a particular case, and determining for that particular case what the conduct of the carrier shall be in respect of the particular dispute involved in it. It is the exertion of no general power to prejudge or to fix rates, nor is it the exertion of any power to fix rates in general. If this distinction be observed,

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there is no difficulty whatever. This is precisely in accord with what Mr. Justice Shiras said. After stating what had happened before the Commission and stating that in the Circuit Court evidence was introduced which had not been laid before the Commission, showing that the rate to Birmingham had been forced down by the coming in of a new competitive road, and that the Circuit Court had thereupon found that the evidence was sufficient to overcome the findings of the Commission, and that the rate complained of was not unreasonable; and after stating that the Circuit Court of Appeals had adopted the views of the Circuit Court in respect of the reasonableness of the rate from Cincinnati to Atlanta, and "as both courts found the existing rate to have been reasonable, we do not feel disposed to review their finding on the matter of fact," he then condemned the conduct of the carriers in lying by. He then says, "Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below and is discussed in the briefs of counsel." He says, "We do not find any provision in the act which expressly or by necessary implication confers such power," etc. He then says, "The reasonableness of the rate in a given case depends on facts, and the function of the Commission is to consider these facts and give them the proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fix a rate, that rate is prejudged by the Commission to be reasonable." In this proposition we entirely concur; but in this case the identical question was raised by the petitions, an issue was made, evidence was taken on both sides, and the facts found, so that the sum fixed as reasonable by the Commission was not prejudged. And he adds that "Subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage, or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law." Here again

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it will be seen that reasonableness and unreasonableness, justice and injustice, preference, advantage, prejudice, disadvantage are the very subjects that he says are within the competence of the Commission to determine. If the Supreme Court had been of opinion that the action of the Commission in its decision in regard to the Atlanta rate was beyond its jurisdictional power, they would have so said, and affirmed the judgment on that ground; but in distinct terms they affirm the judgment of the Circuit Court and the Court of Appeals upon the express ground that the Commission was in error in its finding of fact.

VII. The judiciary of the United States have recently been able, without the special aid of any act of Congress, to preserve the interstate carriers from being despoiled by unlawful interference with their operations. It is to be hoped for the good name of Congress and for the public welfare and contentment that the same judiciary will find that Congress has adequately provided for protecting the people from being despoiled by the carriers, and that it is within the clear competence of the Commission and the courts to make these provisions effectual.

Mr. Edward Baxter for appellees.

Mr. A. A. Wiley filed a brief for appellees and for the Savannah, Florida and Western Railway Company.

MR. JUSTICE SHIRAS, after stating the case, delivered the opinion of the court.

Several of the assignments of error complain of the action of the Circuit Court of Appeals in not rendering a decree for the enforcement of those portions of the order of the Interstate Commerce Commission which prescribed rates, to be thereafter charged by the defendant companies, for services performed in the transportation of goods.

Discussion of those assignments is rendered unnecessary by the recent decisions of this court, wherein it has been held,

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after elaborate argument, that Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates, either maximum, or minimum, or absolute; and that, as it did not give the express power to the Commission, it did not intend to secure the same result indirectly by empowering that tribunal, after having determined what, in reference to the past, were reasonable and just rates, to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just. *Cincinnati, New Orleans & Texas Pacific Railway v. Interstate Commerce Commission*, 162 U. S. 184; *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Railway*, 167 U. S. 479.

Errors are likewise assigned to the action of the court in having failed and refused to affirm and enforce the report and opinion of the Commission, wherein it was found and decided, among other things, that the defendants, common carriers which participate in the transportation of class goods to Troy from Louisville, St. Louis and Cincinnati, and from New York, Baltimore and other Northeastern points, and the defendants, common carriers which participate in the transportation of phosphate rock from South Carolina and Florida to Troy, and the defendants, common carriers which participate in the transportation of cotton from Troy to the ports of New Orleans, Brunswick, Savannah, Charleston, West Point or Norfolk, as local shipments or for export, have made greater charges, under substantially similar circumstances and conditions, for the shorter distance to or from Troy than for longer distances over the same lines in the same direction, and have unjustly discriminated in rates against Troy, and subjected said place and dealers and shippers therein to undue and unreasonable prejudice and disadvantage in favor of Montgomery, Eufaula, Columbus and other places and localities and dealers and shippers therein, in violation of the provisions of the act to regulate commerce.

Whether competition between lines of transportation to Montgomery, Eufaula and Columbus justifies the giving to

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those cities a preference or advantage in rates over Troy, and, if so, whether such a state of facts justifies a departure from equality of rates without authority from the Interstate Commerce Commission under the proviso to the fourth section of the act, are questions of construction of the statute, and are to be determined before we reach the question of fact in this case.

It is contended, in the briefs filed on behalf of the Interstate Commission, that the existence of rival lines of transportation and, consequently, of competition for the traffic, are not facts to be considered by the Commission, or by the courts, when determining whether property transported over the same line is carried under "substantially similar circumstances and conditions," as that phrase is found in the fourth section of the act.

Such, evidently, was not the construction put upon this provision of the statute by the Commission itself in the present case; for the record discloses that the Commission made some allowance for the alleged dissimilarity of circumstances and conditions, arising out of competition and situation, as affecting transportation to Montgomery and Troy respectively, and that, among the errors assigned, is one complaining that the court erred in not holding that the rates prescribed by the Commission in its order made due allowance for such dissimilarity.

So, too, in *In re Louisville & Nashville Railroad*, 1 Int. C. C. Rep. 31, 78, in discussing the long and short haul clause, it was said by the Commission, per Judge Cooley, that "it is impossible to resist the conclusion that in finally rejecting the 'long and short haul clause' of the House bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the fourth section as it had passed the Senate, both houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and, among others, in cases where the circumstances and conditions of the traffic were affected by the

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element of competition, and where exceptions might be a necessity if the competition was to continue. And water competition was beyond doubt especially in view."

It is, no doubt, true that in a later case, *Railroad Commission of Georgia v. Clyde Steamship Co.*, 5 Int. C. C. Rep. 326, the Commission somewhat modified their holding in the *Louisville and Nashville Railroad Company case*, just cited, by attempting to restrict the competition, that it is allowable to consider, to the cases of competition with water carriers, competition with foreign railroads, competition with railroad lines wholly in a single State; but the principle that competition in such cases is to be considered is affirmed.

That competition is one of the most obvious and effective circumstances that make the conditions, under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce, has been held by many of the Circuit Courts. It is sufficient to cite a few of the number: *Ex parte Koehler*, 31 Fed. Rep. 315; *Missouri Pacific Railway v. Texas & Pacific Railway*, 31 Fed. Rep. 862; *Interstate Com. Com. v. Atchison, Topeka &c. Railroad*, 50 Fed. Rep. 295; *Same v. New Orleans & Texas Pacific Railroad*, 56 Fed. Rep. 925, 943; *Behlmer v. Louisville & Nashville Railroad*, 71 Fed. Rep. 835; *Int. Com. v. Louisville & Nashville Railroad*, 73 Fed. Rep. 409.

In construing statutory provisions, forbidding railway companies from giving any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatever, the English courts have held, after full consideration, that competition between rival lines is a fact to be considered, and that a preference or advantage thence arising is not necessarily undue or unreasonable. *Denaby Main Colliery Co. v. Manchester, Sheffield & Lincolnshire Railway*, 11 App. Cas. 97; *Phipps v. London & North Western Railway*, 2 Q. B. D. 1892, 229.

But the question whether competition as affecting rates is an element for the Commission and the courts to consider in

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applying the provisions of the act to regulate commerce, is not an open question in this court.

In *Interstate Com. Commission v. Baltimore & Ohio Railroad*, 145 U. S. 263, it was said, approving observations made by Jackson, Circuit Judge, (43 Fed. Rep. 37,) that the act to regulate commerce was "not designed to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons travelling over the road. In other words it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail; that it is not all discriminations or preferences that fall within the inhibition of the statute, only such as are unjust or unreasonable;" and, accordingly, it was held that the issue by a railway company, engaged in interstate commerce, of a "party-rate ticket" for the transportation of ten or more persons from a place situated in one State or Territory to a place situated in another State or Territory, at a rate less than that charged to a single individual for a like transportation on the same trip, does not thereby make "an unjust or unreasonable charge" against such individual within the meaning of the first section of the act to regulate commerce; nor make "an unjust discrimination" against him within the meaning of the second section; nor give "an undue or unreasonable preference or advantage" to the purchasers of the party-rate ticket within the meaning of the third section.

In *Texas & Pacific Railway v. Interstate Com. Com.*, 162 U. S. 197, it was held that "in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage, the welfare of the communities occupying the localities where the

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goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; that among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges, made at a low rate to secure foreign freights which would otherwise go by other competitive routes, are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered."

To prevent misapprehension, it should be stated that the conclusion to which we are led by these cases, that, in applying the provisions of the third and fourth sections of the act, which make it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the second section of the act.

As we have shown in the recent case of *Wight v. United States*, 167 U. S. 512, the purpose of the second section is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and we there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.

This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for what we hold is that, as the purposes of the several sections are different, the phrase under

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consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but that in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough to include all the facts that have a legitimate bearing on the situation — among which we find the fact of competition when it affects rates.

In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the commission or the courts from taking that matter into consideration.

It is further contended, on behalf of the appellant, that the courts below erred in holding, in effect, that competition of carrier with carrier, both subject to the act to regulate commerce, will justify a departure from the rule of the fourth section of the act without authority from the Interstate Commerce Commission, under the proviso to that section.

In view of the conclusion hereinbefore reached, the proposition comes to this, that, when circumstances and conditions are substantially dissimilar, the railway companies can only avail themselves of such a situation by an application to the Commission.

The language of the proviso is as follows :

"That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to

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charge less for longer than shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

The claim now made for the Commission is that the only body which has the power to relieve railroad companies from the operation of the long and short haul clause on account of the existence of competition, or any other similar element which would make its application unfair, is the Commission itself, which is bound to consider the question, upon application by the railroad company, but whose decision is discretionary and unreviewable.

The first observation that occurs on this proposition is that there appears to be no allegation in the bill or petition raising such an issue. The gravamen of the complaint is that the defendant companies have continued to charge and collect a greater compensation for services rendered in transportation of property than is prescribed in the order of the Commission. It was not claimed that the defendants were precluded from showing in the courts that the difference of rates complained of was justified by dissimilarity of circumstances and conditions, by reason of not having applied to the Commission to be relieved from the operation of the fourth section.

Moreover, this view of the scope of the proviso to the fourth section does not appear to have ever been acted upon or enforced by the Commission. On the contrary, in the case of *In re Louisville & Nashville Railroad v. Interstate Com. Com.*, 1 Int. C. C. Rep. 31, 57, the Commission, through Judge Cooley, said, in speaking of the effect of the introduction into the fourth section of the words "under substantially similar circumstances and conditions," and of the meaning of the proviso: "That which the act does not declare unlawful must remain lawful if it was so before, and that which it fails to forbid, the carrier is left at liberty to do, without permission of any one. . . . The charging or receiving the greater compensation for the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar

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circumstances and conditions; and, therefore, if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, since, if the circumstances and conditions of the two hauls are dissimilar, the statute is not violated. . . . Beyond question, the carrier must judge for itself what are the 'substantially similar circumstances and conditions' which preclude the special rate, rebate or drawback, which is made unlawful by the second section; since no tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law. The carrier judges on peril of the consequences; but the special rate, rebate or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this, it must also, when using the same words in the fourth section, have intended that the carrier, whose privilege was in the same way limited by them, should in the same way act upon its judgment of the limiting circumstances and conditions."

The view thus expressed has been adopted in several of the Circuit Courts: *Interstate Com. Com. v. Atchison, Topeka &c. Railroad*, 50 Fed. Rep. 295, 300; *Same v. Cincinnati, N. O. and Tex. Pac. Railway*, 56 Fed. Rep. 925, 942; *Behlmer v. Louisville & Nashville Railroad*, 71 Fed. Rep. 835, 839; and we do not think the courts below erred in following it in the present case. We are unable to suppose that Congress intended, by the fourth section and the proviso thereto, to forbid common carriers, in cases where the circumstances and conditions are substantially dissimilar, from making different rates until and unless the Commission shall authorize them so to do, much less do we think that it was the intention of Congress that the decision of the Commission, if applied to, could not be reviewed by the courts. The provisions of section 16 of the act, which authorize the court to "proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do jus-

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tice in the premises, and to this end, such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition," extend as well to an inquiry or proceeding under the fourth section as to those arising under the other sections of the act.

Upon these conclusions, that competition between rival routes is one of the matters which may lawfully be considered in making rates, and that substantial dissimilarity of circumstances and conditions may justify common carriers in charging greater compensation for the transportation of like kinds of property for a shorter than for a longer distance over the same line, we are brought to consider whether, upon the evidence in the present case, the courts below erred in dismissing the Interstate Commerce Commission's complaint.

As the third section of the act, which forbids the making or giving any undue or unreasonable preference or advantage to any particular person or locality, does not define what, under that section, shall constitute a preference or advantage to be undue or unreasonable, and as the fourth section, which forbids the charging or receiving greater compensation in the aggregate for the transportation of like kinds of property for a shorter than for a longer distance over the same line, under substantially similar circumstances and conditions, does not define or describe in what the similarity or dissimilarity of circumstances and conditions shall consist, it cannot be doubted that whether, in particular instances, there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise, are questions of fact depending on the matters proved in each case. *Denaby Main Colliery Company v. Manchester &c. Railway Co.*, 3 Railway & Canal Traffic Cases, 426; *Phipps v. London & North Western Railway*, 1892, 2 Q. B. D. 229; *Cincinnati, N. O. & Tex. Pac. Railway v. Interstate Com. Com.*, 162 U. S. 184, 194; *Texas and Pacific Railway v. Interstate Com. Com.*, 162 U. S. 197, 235.

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The Circuit Court, after a consideration of the evidence, expressed its conclusion thus:

"In any aspect of the case it seems impossible to consider this complaint of the Board of Trade of Troy against the defendant railroad companies, particularly the Midland and Georgia Central railroads, in the matter of the charge upon property transported on their roads to or from points east or west of Troy, as specified and complained of, obnoxious to the fourth or any other section of the interstate commerce act. The conditions are not substantially the same and the circumstances are dissimilar, so that the case is not within the statute. The case made here is not the case as it was made before the Commission. New testimony has been taken, and the conclusion reached is that the bill is not sustained; that it should be dismissed, and it is so ordered." 69 Fed. Rep. 227.

The Circuit Court of Appeals, in affirming the decree of the Circuit Court, used the following language:

"Only two railroads, the Alabama Midland and the Georgia Central, reach Troy. Each of these roads has connection with other lines, parties hereto, reaching all the long-distance markets mentioned in these proceedings. The Commission finds that no departure from the long and short haul rule of the fourth section of the statute as against Troy as the shorter distance point, and in favor of Montgomery as the longer distance point, appears to be chargeable to the Georgia Central. The rates in question when separately considered, are not unreasonable or unjust. As a matter of business necessity they are the same by each of the railroads that reach Troy. The Commission concludes that, as related to the rates to Montgomery, Columbus and Eufaula, the rates to and from Troy unjustly discriminate against Troy and in the case of the Alabama Midland violate the long and short haul rule.

"The population and volume of business at Montgomery are many times larger than at Troy. There are many more railway lines running to and through Montgomery, connecting with all the distant markets. The Alabama River, open all the year, is capable, if need be, of bearing to Mobile on the sea the burden of all the goods of every class that

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pass to or from Montgomery. The competition of the railway lines is not stifled, but is fully recognized and intelligently and honestly controlled and regulated by the traffic association in its schedule of rates. There is no suggestion in the evidence that the traffic managers who represent the carriers that are members of that association are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them, or is likely to lead them, to unjustly discriminate against Troy. When the rates to Montgomery were higher a few years ago than now, actual active water-line competition by the river came in, and the rates were reduced to the level of the lowest practical paying water rates, and the volume of carriage by the river is now comparatively small, but the controlling power of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity. And this water line affects to a degree less or more all the shipments to or from Montgomery from or to all the long-distance markets. It would not take cotton from Montgomery to the South Atlantic ports for export, but it would take the cotton to the points of its ultimate destination if the railroad rates to foreign marts through the Atlantic ports were not kept down to or below the level of profitable carriage by water from Montgomery through the port of Mobile. The volume of trade to be competed for, the number of carriers actively competing for it, and a constantly open river present to take a large part of it whenever the railroad rates rise up to the mark of profitable water carriage, seem to us, as they did to the Circuit Court, to constitute circumstances and conditions at Montgomery substantially dissimilar from those existing at Troy, and to relieve the carriers from the charges preferred against them by the Board of Trade. We do not discuss the third and fourth contention of the counsel for the appellant further than to say that, within the limits of the exercise of intelligent good faith in the conduct of their business, and subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference

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or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. The carriers are better qualified to adjust such matters than any court or board of public administration, and, within the limitations suggested, it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business." 41 U. S. App. 453.

The last sentence in this extract is objected to by the Commission's counsel, as declaring that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carriers. If so read, we should not be ready to adopt or approve such a position. But we understand the statement, read in the connection in which it occurs, to mean only that, when once a substantial dissimilarity of circumstances and conditions has been made to appear, the carriers are, from the nature of the question, better fitted to adjust their rates to suit such dissimilarity of circumstances and conditions than courts or commissions; and when we consider the difficulty, the practical impossibility, of a court or a commission taking into view the various and continually changing facts that bear upon the question, and intelligently regulating rates and charges accordingly, the observation objected to is manifestly just. But it does not mean that the action of the carriers, in fixing and adjusting the rates, in such instances, is not subject to revision by the Commission and the courts, when it is charged that such action has resulted in rates unjust or unreasonable, or in unjust discriminations and preferences. And such charges were made in the present case, and were considered, in the first place by the Commission, and afterwards by the Circuit Court and by the Circuit Court of Appeals.

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The first contention we encounter, upon this branch of the case, is that the Circuit Court had no jurisdiction to review the judgment of the Commission upon this question of fact; that the court is only authorized to inquire whether or not the Commission has misconstrued the statute and thereby exceeded its power; that there is no general jurisdiction to take evidence upon the merits of the original controversy; and, especially, that questions under the third section are questions of fact and not of power, and hence unreviewable.

We think this contention is sufficiently answered by simply referring to those portions of the act which provide that, when the court is invoked by the Commission to enforce its lawful orders or requirements, the court shall proceed, as a court of equity, to hear and determine the matter, and in such manner as to do justice in the premises.

In the case of *Cincinnati, N. O. and Texas Pac. Railway v. Int. Com. Com.*, 162 U. S. 184, the findings of the Commission were overruled by the Circuit Court, after additional evidence taken in the court, and the decision of the Circuit Court was reviewed in the light of the evidence and reversed by the Circuit Court of Appeals, and this court, in reference to the argument that the Commission had not given due weight to the facts that tended to show that the circumstances and conditions were so dissimilar as to justify the rates charged, held that as the question was one of fact, peculiarly within the province of the Commission, and as its conclusions had been accepted and approved by the Circuit Court of Appeals, and as this court found nothing in the record that made it our duty to draw a different conclusion, the decree of the Circuit Court of Appeals should be affirmed. Such a holding clearly implies that there was power in the courts below to consider and apply the evidence and in this court to review their decisions.

So in the case of *Texas & Pacific Railway v. Interstate Com. Com.*, 162 U. S. 197, the decision of the Circuit Court of Appeals, which affirmed the validity of the order of the Commission, upon the ground that, even if ocean competition should be regarded as creating a dissimilar condition, yet that,

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in the case under consideration, the disparity in rates was too great to be justified by that condition, was reversed by this court, not because the Circuit Court had no jurisdiction to consider the evidence and thereupon to affirm the validity of the order of the Commission, but because that issue was not actually before the court, and that no testimony had been adduced by either party on such an issue; and it was said that the language of the act authorizing the court to hear and determine the matter as a case of equity, "necessarily implies that the court is not concluded by the findings or conclusions of the Commission."

Accordingly our conclusion is that it was competent, in the present case, for the Circuit Court, in dealing with the issues raised by the petition of the Commission and the answers thereto, and for the Circuit Court of Appeals on the appeal, to determine the case upon a consideration of the allegations of the parties and of the evidence adduced in their support, giving effect, however, to the findings of fact in the report of the Commission as *prima facie* evidence of the matters therein stated.

It has been uniformly held by the several Circuit Courts and the Circuit Courts of Appeal, in such cases, that they are not restricted to the evidence adduced before the Commission, nor to a consideration merely of the power of the Commission to make the particular order under question, but that additional evidence may be put in by either party, and that the duty of the court is to decide, as a court of equity, upon the entire body of evidence.

Coming at last to the questions of fact in this case, we encounter a large amount of conflicting evidence. It seems undeniable, as the effect of the evidence on both sides, that an actual dissimilarity of circumstances and conditions exists between the cities concerned, both as respects the volume of their respective trade and the competition, affecting rates, occasioned by rival routes by land and water. Indeed, the Commission itself recognized such a state of facts by making an allowance, in the rates prescribed, for dissimilarity resulting from competition, and it was contended on behalf of the Com-

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mission, both in the courts below and in this court, that the competition did not justify the discriminations against Troy to the *extent* shown, and that the allowance made therefor by the Commission was a *due* allowance.

The issue is thus restricted to the question of the preponderance of the evidence on the respective sides of the controversy. We have read the evidence disclosed by the record, and have endeavored to weigh it with the aid of able and elaborate discussions by the respective counsel.

No useful purpose would be served by an attempt to formally state and analyze the evidence, but the result is that we are not convinced that the courts below erred in their estimate of the evidence, and that we perceive no error in the principles of law on which they proceeded in the application of the evidence.

The decree of the Circuit Court of Appeals is accordingly

Affirmed.

MR. JUSTICE HARLAN, dissenting.

I dissent from the opinion and judgment in this case. Taken in connection with other decisions defining the powers of the Interstate Commerce Commission, the present decision, it seems to me, goes far to make that commission a useless body for all practical purposes, and to defeat many of the important objects designed to be accomplished by the various enactments of Congress relating to interstate commerce. The Commission was established to protect the public against the improper practices of transportation companies engaged in commerce among the several States. It has been left, it is true, with power to make reports, and to issue protests. But it has been shorn, by judicial interpretation, of authority to do anything of an effective character. It is denied many of the powers which, in my judgment, were intended to be conferred upon it. Besides, the acts of Congress are now so construed as to place communities on the lines of interstate commerce at the mercy of competing railroad companies engaged in such commerce. The judgment in this case, if I do not misapprehend its scope and effect,

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proceeds upon the ground that railroad companies, when competitors for interstate business at certain points, may, in order to secure traffic for and at those points, establish rates that will enable them to accomplish that result, although such rates may discriminate against intermediate points. Under such an interpretation of the statutes in question, they may well be regarded as recognizing the authority of competing railroad companies engaged in interstate commerce — when their interests will be subserved thereby — to build up favored centres of population at the expense of the business of the country at large. I cannot believe that Congress intended any such result, nor do I think that its enactments, properly interpreted, would lead to such a result.
